



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION  
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**DA 99-249**  
**January 29, 1999**

## **AUCTION OF 528 MULTILATERATION LOCATION AND MONITORING SERVICE LICENSES**

### **Status of Applications to Participate in the Auction**

#### **Bureau Reminds Bidders of Responsibilities Under NEPA Provisions**

#### **Report No. AUC-21-G (Auction No. 21)**

The Federal Communications Commission ("FCC") has received **6** FCC Form 175 applications to participate in an auction scheduled to begin on Tuesday, February 23, 1999, for 528 multilateration Location and Monitoring Service ("LMS") licenses. The applications have been reviewed for completeness and compliance with the Commission's Rules, and have been classified into the following categories:

**ACCEPTED FOR FILING..... 3 Applications**

**INCOMPLETE..... 3 Applications**

**Accepted:** Applications classified as accepted for filing are listed in Attachment A. **These applicants will become qualified bidders upon receipt of the required upfront payment by 6:00 p.m. ET on Monday, February 8, 1999, as discussed below.** With respect to their applications, these applicants need take no further action except as may be necessary to keep

their applications up-to-date.<sup>1</sup> Applicants are also advised that Attachment A includes FCC account numbers that are automatically created by the FCC software system for each applicant. FCC account numbers are applicable for bidding only.

**Incomplete:** Applications classified as incomplete are listed alphabetically in Attachment B. Applicants whose applications have been classified as incomplete will receive overnight correspondence indicating what information is required to make the applications acceptable for filing. **These applicants will become qualified bidders only if they: (1) resubmit their applications by 5:30 p.m. ET on Monday, February 8, 1999, to correct the minor deficiencies indicated; and (2) make the required upfront payments by 6:00 p.m. ET on Monday, February 8, 1999, as discussed below.** They must also keep their applications up-to-date as required.<sup>2</sup> Applicants are also advised that Attachment B includes FCC account numbers that are automatically created by the FCC software system for each applicant. FCC account numbers are applicable for bidding only.

### **RESUBMISSION FILING DEADLINE**

Corrected FCC Form 175 applications must be filed no later than **5:30 p.m. ET on Monday, February 8, 1999.** This will be the only opportunity to cure FCC Form 175 defects; late resubmissions will not be accepted. Applicants that filed their FCC Form 175 applications electronically must resubmit their corrected applications electronically.

### **UPFRONT PAYMENT DEADLINE**

Upfront payments and accompanying FCC Remittance Advice (FCC Form 159) for this auction are due at Mellon Bank, Pittsburgh, Pennsylvania, **by 6:00 p.m. ET on Monday, February 8, 1999.** Payments must be made by wire transfer and applicants must include their Taxpayer Identification Numbers (TIN). No other payment method is acceptable for this auction.<sup>3</sup> **Applicants are reminded to use their TIN numbers and not their FCC Account Numbers on the FCC Remittance Advice (FCC Form 159).**

**Applicants that have filed applications classified by this Public Notice as incomplete must submit timely and sufficient upfront payments before the Commission will review their resubmitted applications.** If such an application remains incomplete following its resubmission, it will be dismissed. The upfront payment will be refunded

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<sup>1</sup> See 47 C.F.R. §§ 1.65 and 1.2106.

<sup>2</sup> See 47 C.F.R. §§ 1.65 and 1.2106.

<sup>3</sup> See "Auction of Location and Monitoring Service Licenses; Auction Notice and Filing Requirements for 528 Multilateration Licenses; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 98-1879 (rel. September 23, 1998), 63 FR 54693 (October 13, 1998) for detailed remittance and upfront payment instructions ("*Auction Public Notice*"). Detailed information regarding upfront payments also can be found in Tab C of the LMS Bidder Information Package on pages 64-66 (how to make payment by wire transfer), and in Tab F on pages 121-133 (how to complete the FCC Remittance Advice (FCC Form 159)).

automatically if the applicant has provided its Taxpayer Identification Number (TIN) and wire transfer instructions.

## **OTHER IMPORTANT INFORMATION**

**Qualified Bidders:** A final Public Notice listing all applicants qualified to bid in the auction will be released after upfront payments have been received, resubmitted FCC Form 175 applications have been processed and reviewed, and payments and applications have been correlated. The final Public Notice will also include instructions on how to monitor the auction on-line and how to access the bid tracking tool software.

**Reserve Price or Minimum Opening Bid:** The Wireless Telecommunications Bureau ("Bureau") has established minimum opening bid requirements for the LMS auction.<sup>4</sup>

**Prohibition of Collusion:** To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission's Rules prohibits applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. For the LMS auction, this prohibition became effective at the filing deadline of short-form applications on Monday, January 25, 1999, and will end on the post-auction down payment due date to be announced in a future Public Notice. To comply with this rule, bidders competing for the same license(s) are encouraged not to use the same individual authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.<sup>5</sup> The Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when

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<sup>4</sup> For general information about how the minimum opening bids for the LMS auction were calculated, see the *Auction Public Notice* or Tab D, pages 71-72 of the LMS Bidder Information Package. To find out the minimum opening bid for each of the 528 multilateration LMS licenses to be auctioned, see "Correction to Attachment A; Auction of Location and Monitoring Service Licenses; Auction Notice and Filing Requirements for 528 Multilateration Licenses, Minimum Opening Bids and Other Procedural Issues," *Public Notice Erratum*, released on October 7, 1998. This document is available on the FCC Web Site at <http://www.fcc.gov/wtb/> auctions by clicking on "Location and Monitoring Serv.," under the "Future Auctions" heading on the right side of the screen. When that page appears, click on "FCC Releases" and then on "Public Notices."

<sup>5</sup> See, e.g., "Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction," *Public Notice*, 13 FCC Rcd 341 (1998); In re Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977, ¶ 11 (1998) ("*Nevada Wireless*").

warranted.<sup>6</sup> In the LMS auction, for example, the rule would apply to any applicants bidding for the same multilateration LMS license. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications.<sup>7</sup> By signing their FCC Form 175 short form applications, applicants are certifying their compliance with Section 1.2105(c). In addition, Section 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.<sup>8</sup> Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

In addition, applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anti-competitive behavior in the marketplace. 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. Bidders found to have violated the anti-collusion rule may be subject to sanctions.<sup>9</sup>

**Ex Parte Rule:** Applicants should also be aware that the Commission has generally exempted auction proceedings from the strict requirements of the *ex parte* rule (47 C.F.R. § 1.1208).<sup>10</sup>

**Mock Auction:** All applicants found to be qualified bidders are eligible to participate in a mock electronic auction on **Friday, February 19, 1999**. The Bureau will issue a Public Notice announcing when software for the mock auction is posted on the World Wide Web and BBS.

**Remote Bidding Software:** Applicants are reminded that qualified bidders that filed (or amended) their FCC Form 175 applications electronically are eligible to bid either electronically or telephonically, whereas manual filers may bid only by telephone. To order the remote bidding software, applicants should complete the software order form attached to this Public Notice as Attachment C. To ensure timely delivery of remote bidding software

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<sup>6</sup> See *Nevada Wireless*, 13 FCC Rcd at 11978, ¶ 13 (1998).

<sup>7</sup> See 47 C.F.R. § 1.2105(c).

<sup>8</sup> See 47 C.F.R. § 1.65.

<sup>9</sup> See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

<sup>10</sup> See "Commission Announces that Mutually Exclusive 'Short-Form' Applications (Form 175) to Participate in Competitive Bidding Process ('Auctions') Are Treated as Exempt for Ex Parte Purposes," *Public Notice*, 9 FCC Rcd 6760 (1994).

before the auction begins, the Commission requests receipt of software orders by 5:30 p.m. ET on Tuesday, February 9, 1999. Attachment D to this Public Notice sets out the hardware and software specifications required for the FCC remote bidding system. This information is also contained in Tab D of the LMS Bidder Information Package.

**Long-Form Applications:** All applicants should be aware that at the long-form application stage, they will be subject to the more extensive reporting requirements contained in the Commission's Part 1 ownership disclosure rule.<sup>11</sup>

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

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

As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the LMS auction to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

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

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<sup>11</sup> See 47 C.F.R. § 1.2112(b).

profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

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

**NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS**

Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and licensees must comply with the Commission's NEPA rules for each wireless facility.<sup>12</sup> The Commission's NEPA rules require that, among other things, licensees consult with expert agencies having NEPA responsibilities including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). Licensees must prepare environmental assessments for wireless facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. Licensees must also prepare environmental assessments for wireless facilities that include high intensity white lights in residential neighborhoods or excessive radiofrequency emission.

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For questions about payment or instructions for wiring upfront payments, contact Gail Glasser or Linwood Jenkins, Billing and Collections Branch, at (202) 418-1995. For specific questions about an applicant's incomplete status, the applicant should contact the designated attorney identified in the correspondence sent to the applicants by overnight mail. For additional information, contact: Kenneth Burnley, Legal Branch at (202) 418-0660 (regarding legal questions); Kathryn Garland, Auctions Operations at (717) 338-2801 (regarding bidding and general filing status); and Bob Reagle, Auctions Operation at (202) 418-0660 (regarding bidding). For information regarding FCC rules concerning compliance with the National Environmental Policy Act (NEPA), please contact Robert Cannon or Rose Crellin, at (202) 418-0569.

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<sup>12</sup> See 47 C.F.R. 1.1305-1.1319.

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**FCC Location & Monitoring Service Auction  
Form 175 Accepted List (Initial)  
Auction ID:21**

**Attachment A**



(Sorted by Applicant)

**Date of Report: 1/28/99**

The following Form 175 Applicants have been judged 'Acceptable' and have applied for the following licenses:

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<b>FCC Account #</b>	<b>Name</b>	<b>Waiver Requested</b>
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0211409464	Metro-Trak, LLC	
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**The following License(s):**

BEA003-C BEA010-C BEA012-C BEA013-C BEA034-C BEA040-C BEA057-C BEA063-C BEA064-C BEA107-C  
BEA160-C BEA161-C BEA163-C BEA164-C

0211323469	Warren C. Havens	
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**The following License(s):**

ALL

0211337564	cellutech	
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**The following License(s):**

ALL



**FCC Location & Monitoring Service Auction  
Form 175 Incomplete List (Initial)  
Auction ID: 21**

**ATTACHMENT B**



(Sorted by Applicant)

**Date of Report: 1/28/99**

The following entries have been found to be deficient in completing their Form 175 for the following reasons:

<b>FCC Account #</b>	<b>Name</b>	<b>Error Description</b>	<b>Waiver Requested</b>
0211503403	FCR, Inc.	Invalid Attachments	
0211439202	NAVL, Inc.	Invalid Attachments	
0211049154	Progeny LMS, LLC	Invalid Attachments	

**Attachment C**  
**FCC REMOTE BIDDING SOFTWARE ORDER FORM:**  
**The Location and Monitoring Service Auction**

Only those qualified bidders that file their FCC Form 175 applications electronically have the option of using the FCC Remote Bidding Software to participate in the auction bidding process. Further, while bidders are free to copy the software for use by authorized bidders at different locations, the FCC auction system will accept electronic bids only from bidders who have purchased the software. (Since bidding software is tailored to a specific auction, software from prior auctions will not work for Auction 21.)

The price of the FCC Remote Bidding Software is **\$175.00**, including a user manual and shipping. To order, complete the form below and return no later than 5:30 p.m. ET on **Tuesday, February 9, 1999**, to:

FCC Bidding Software, Auction No. 21  
Auction Operations Branch  
1270 Fairfield Road  
Gettysburg, PA 17325-7245  
FAX: 717-338-2850

For security purposes, software packages will be sent with other registration materials only to the contact person at the applicant address specified on the FCC Form 175.  
**NO EXCEPTIONS.**

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Auction applicant: \_\_\_\_\_  
FCC Assigned Account No.: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Fax Modem No.: \_\_\_\_\_

Payment of \$ **175.00** US (payable to "FCC") by:

check enclosed     Visa     MasterCard

Type:                     3.5 diskette     CD-Rom

Operating System:     Win 95 or above (required)

Credit card number \_\_\_\_\_ Expiration date \_\_\_\_\_

Name on card \_\_\_\_\_

Authorized signature \_\_\_\_\_ Date \_\_\_\_\_

## **Attachment D**

### **FCC Remote Bidding System Hardware and Software Requirements**

At a minimum, bidders need the following hardware and software:

- CPU: Intel® Pentium or above
- RAM: 16 MB (more recommended if you have multiple applications open)
- Hard Disk: 33 MB available disk space
- 1.44 MB Floppy Drive or CD-ROM Drive (to install the Remote Bidding System)
- Modem: v.32bis 14.4 kbps Hayes® compatible modem or faster
- Monitor: VGA or above
- Mouse or other pointing device
- Microsoft® Windows 95™ or Microsoft® Windows 98™
- Netscape® Communicator™ 4.5 is recommended. However, you can also use Netscape Communicator 4.08, 4.07, 4.06 or 4.05 with JDK 1.1. Note: To download Netscape Communicator 4.5 free of charge, access the Netscape download site at <http://home.netscape.com/download/>

For questions regarding the above, please contact Technical Support at (202) 414-1250.