

displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number.

Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 11, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to Lesli.Smith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418-0217 or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-1049.

Title: Digital Broadcast Content Protection, MB Docket No. 02-230.

Type of Review: Extension of currently approved collection.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,520.

Estimated Hours Per Response: 2 to 40 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 3,800 hours.

Total Annual Cost: None.

Needs and Uses: On November 4, 2003, the FCC released the Report and Order and Further Notice of Proposed Rulemaking ("Order"), *In the Matter of Digital Broadcast Content Protection*, MB Docket No. 02-230, FCC 03-273. The Order established a redistribution control content protection system for digital broadcast television in order to prevent the widespread indiscriminate redistribution of high value digital

broadcast content and to assure the continued availability of such content to broadcast outlets. The Order adopted the use of an ATSC flag, which can be embedded in DTV content to signal to consumer electronics devices to protect such content from indiscriminate redistribution. In order for this protection system to work, demodulators integrated within, or produced for use in, DTV reception devices, including PC and IT products, ("Covered Demodulator Products") must recognize and give effect to the ATSC flag pursuant to certain compliance and robustness rules. In particular, content that is marked within the ATSC flag must be handled in a protected fashion through the use of digital content protection and recording technologies. In order to ensure that digital content is being adequately protected, such technologies must be reviewed and approved for use. The Order established interim procedures by which proponents of digital content protection and recording technologies can certify to the Commission that such technologies and appropriate for use in Covered Demodulator Products, subject to public notice and comment.

To facilitate enforcement and compliance, the Order adopted a written commitment regime whereby manufacturers or importers of ATSC demodulators obtain from buyers of such products a written commitment that they will incorporate such demodulators into compliant and robust devices or sell or distribute them to third parties that have also made such written commitment. The Order also adopted a written commitment regime to ensure that manufacturers or importers of Peripheral TSP Products (products where the demodulator and transport stream processor are physically separate) will abide by the Demodulator Products compliance and robustness rules. The interim approval process for digital content protection and recording technologies and the written commitment regime are essential components of the Commission's redistribution control content protection system for digital broadcast television. These information collections ensure objectivity and transparency as a part of this process.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04-5545 Filed 3-11-04; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-04-52-D; DA 04-278]

Auction of Direct Broadcast Satellite Service Licenses Rescheduled for July 14, 2004; Notice and Filing; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures, minimum opening bids, and revised inventory for the upcoming auction of licenses to use the Direct Broadcast Satellite ("DBS") service allocation in the 12.2-12.7 GHz band. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 52 is rescheduled for July 14, 2004.

FOR FURTHER INFORMATION CONTACT:

Auctions and Spectrum Access Division, WTB: For legal questions: Brian Carter at (202) 418-0660, for general auction questions: Jeff Crooks at (202) 418-0660 or Lisa Stover at (717) 338-2888. *Media Contact:* Lauren Patrich at (202) 418-7944. *Satellite Division, IB:* For service rule questions: Rockie Patterson at (202) 418-1183 or Selina Khan at (202) 418-7282.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 52 Procedures Public Notice* released on February 6, 2004. The complete text of the *Auction No. 52 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction No. 52 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com. This document is also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/52/>.

I. General Information

A. Introduction

1. The *Auction No. 52 Procedures Public Notice* announces that Auction No. 52, an auction of licenses to use the Direct Broadcast Satellite ("DBS") service allocation in the 12.2-12.7 GHz

band, has been rescheduled for July 14, 2004. In addition, in the *Auction No. 52 Procedures Public Notice* the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for Auction No. 52 and sets forth a revised list of the DBS licenses available in the auction. On March 3, 2003, in accordance with the Balanced Budget Act of 1997, the Commission released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used for Auction No. 52. Four comments and two reply comments were submitted in response to the *Auction No. 52 Comment Public Notice*, 68 FR 12906, March 18, 2003.

i. Background of Proceeding

2. The Commission first established DBS service rules in 1982 by adopting "interim" rules that were codified in Part 100 of its regulations. The first applications for authority to construct, launch, and operate DBS satellite systems were also accepted in 1982. In 1995, the Commission adopted new service rules for DBS. At the same time, the Commission adopted competitive bidding rules for the DBS service. The first DBS auctions were held in January 1996.

3. On April 11, 2002, the Bureau, acting under delegated authority, streamlined the DBS competitive bidding rules by conforming them with the general competitive bidding rules set forth in Part 1 of the Commission's rules. On June 13, 2002, the Commission released the *Part 100 R&O*, 67 FR 51110, August 7, 2002, in which it further streamlined the regulation of DBS and moved the DBS rules from part 100 to part 25.

4. On January 15, 2004, the Commission released an Order affirming its conclusion in the *Auction No. 52 Comment Public Notice* that the FCC's authority to auction the DBS licenses has not been altered by regulatory and statutory actions taken since DBS auctions were last held, and declining to impose eligibility restrictions on the three available licenses to operate at the western orbit locations of 175° W.L., 166° W.L., and 157° W.L. The Commission did not address in this Order the question of whether any eligibility restrictions are appropriate for the license to use the two available channels at the eastern orbit location of 61.5° W.L. but instead deferred the resolution of this matter to a subsequent Order.

ii. Licenses To Be Auctioned

5. Auction No. 52 will include three licenses for unassigned channels at orbit

locations of 175° W.L., 166° W.L., and 157° W.L. The license to use the two available channels at the eastern orbit location of 61.5° W.L., which was included in the list of licenses available for auction in the *Auction No. 52 Comment Public Notice*, will not be offered in Auction No. 52 because there remains pending the issue of whether any eligibility restrictions are appropriate for this license. In addition, in May 2003 the International Bureau authorized EchoStar to use three channels at the 157° W.L. orbit location. The license available for auction at that orbit location will therefore authorize the use of 29 channels, rather than 32 as previously announced in the *Auction No. 52 Comment Public Notice*.

6. The licenses included in Auction No. 52 will be subject to the Commission's DBS service rules, including the geographic service rules at 47 CFR 25.148(c). A complete list and description of the licenses available in Auction No. 52 is included as Attachment A of the *Auction No. 52 Procedures Public Notice*.

B. Rules and Disclaimers

i. Relevant Authority

7. Prospective applicants must familiarize themselves thoroughly with the Commission's rules relating to the DBS service contained in title 47, part 25 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 52 Procedures Public Notice*; the *Auction No. 52 Comment Public Notice*; and the *Part 1 Fifth Report and Order*, 65 FR 52323, August 29, 2000, (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).

8. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion

9. To ensure the competitiveness of the auction process, § 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 such applicants have identified each other on their FCC Form 175 applications as parties with whom they have entered into agreements under § 1.2105(a)(2)(viii). 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 § 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. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. For purposes of this prohibition, § 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 the entity.

10. Because all three licenses available in Auction No. 52 have overlapping service areas, all applicants are encouraged to avoid using the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more applicants and conveys information concerning the substance of bids or bidding strategies between the applicants 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 certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. However, 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 warranted.

11. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering any of the same geographic areas. In Auction No. 52, applicants will not be able to take advantage of these rule provisions because all three available licenses have overlapping service areas. However, all applicants may enter into bidding agreements before filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with any other applicants. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

12. In addition, § 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 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, § 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 § 1.65.

13. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment F of the *Auction No. 52 Procedures Public Notice*.

iii. Other Services Authorized in the 12.2–12.7 GHz Band

14. In 2000, the Commission allocated the 12.2–12.7 GHz band for non-geostationary satellite orbit ("NGSO") fixed-satellite service ("FSS") downlinks on a primary basis. At the same time, the Commission authorized the Multichannel Video Distribution and Data Service ("MVDDS") as a new service under the existing primary status fixed service allocation in the 12.2–12.7 GHz band. The Commission concluded that MVDDS could operate in the 12 GHz band on a co-primary non-harmful interference basis with incumbent DBS providers. In the *MVDDS Second R&O*, 67 FR 43031, June 26, 2002, the Commission established service rules for MVDDS, including technical criteria that will protect DBS providers from interference. An auction of MVDDS licenses concluded on January 27, 2004.

iv. Coordination With Other Countries

15. All DBS licensees must comply with the provisions of the International Telecommunication Union ("ITU") Region 2 Band Plan for Ku-band DBS satellites. They must also comply with §§ 25.114(c)(23) and 25.111(c) of the Commission's rules. These rules require DBS licensees to provide technical information and analyses to the Commission where it may be necessary to request a modification of the ITU Region 2 Band Plan.

v. Due Diligence

16. Potential applicants are reminded that there are matters pending with the Commission that could affect the licenses scheduled to be offered in Auction No. 52. These matters may involve applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA"), waiver requests, petitions to deny, petitions for reconsideration, and applications for review that may be pending before the Commission and relate to particular applicants or incumbent licensees. 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 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. To aid potential bidders,

on February 24, 2004, the Bureau issued a Due Diligence Announcement listing matters pending before the Commission that relate to licenses or applications in these services. However, the Commission makes no representations or guarantees that the matters listed in the Due Diligence Announcement are the only pending matters that could affect spectrum availability in these services.

17. Potential applicants 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.

vi. Bidder Alerts

18. 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 and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

19. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 52 to deceive and defraud unsuspecting investors.

20. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 52 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

vii. National Environmental Policy Act Requirements

21. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act ("NEPA").

C. Auction Specifics

i. Auction Date

22. The auction will begin on July 14, 2004. The initial schedule for bidding

will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

ii. Auction Title

23. Auction No. 52—Direct Broadcast Satellite Service.

iii. Bidding Methodology

24. The bidding methodology for Auction No. 52 will be simultaneous multiple round bidding. The Commission will conduct this auction

over the Internet. Telephonic bidding will also be available, and the FCC Wide Area Network will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

25. The following is a list of important dates related to Auction No. 52:

Auction Seminar	May 13, 2004.
Short-Form (FCC Form 175) Filing Window Opens	May 13, 2004; 12 p.m. ET.
Short-Form (FCC Form 175) Application Deadline	May 21, 2004; 6 p.m. ET.
Upfront Payments (via wire transfer)	June 18, 2004; 6 p.m. ET.
Mock Auction	July 9, 2004.
Auction Begins	July 14, 2004.

v. Requirements for Participation

26. Any entity wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, May 21, 2004.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, June 18, 2004.
- Comply with all provisions outlined in the *Auction No. 52 Procedures Public Notice*.

vi. General Contact Information

27. The following is a list of general contact information related to Auction No. 52:

GENERAL AUCTION INFORMATION
General Auction Questions
Seminar Registration

FCC Auctions Hotline, (888) 225-5322, Press Option #2, or direct (717) 338-2888, Hours of service: 8 a.m.–5:30 p.m. ET, Monday through Friday

AUCTION LEGAL INFORMATION
Auctions and Spectrum Access
Division, Auction Rules, Policies, Regulations (202) 418-0660

LICENSING INFORMATION
Rules, Policies, Regulations
Licensing Issues
Due Diligence
Incumbency Issues

International Bureau, Satellite
Division, Rockie Patterson (202) 418-1183, Selina Khan (202) 418-7282

TECHNICAL SUPPORT

Electronic Filing

FCC Automated Auction System

FCC Auctions Technical Support
Hotline, (202) 414-1250, (202) 414-1255 (TTY), Hours of service: 8 a.m.–6 p.m. ET, Monday through Friday

PAYMENT INFORMATION

Wire Transfers
Refunds

FCC Auctions Accounting Branch,
(202) 418-0578 or (202) 418-0496,
(202) 418-2843 (Fax)

TELEPHONIC BIDDING

Will be furnished only to qualified bidders

PRESS INFORMATION

Lauren Patrich (202) 418-7944

FCC FORMS

(800) 418-3676 (outside Washington, DC), (202) 418-3676 (in the Washington Area), <http://www.fcc.gov/formpage.html>

FCC INTERNET SITES

<http://www.fcc.gov>, <http://wireless.fcc.gov/auctions>, <http://wireless.fcc.gov/uls>

II. Short-Form (FCC Form 175) Application Requirements

28. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 52 Procedures Public Notice*.

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

29. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to provide information required by §§ 1.2105 and 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

30. Applicants will be required to identify on their short-form applications any 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 licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any

explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.

31. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction-related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit C)

32. Each applicant must certify on its FCC Form 175 application under penalty of perjury that the applicant, its controlling interests, its affiliates, and the affiliates of its controlling interests, as defined by § 1.2110, are not in default on any Commission licenses (including down payments) and not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its

controlling interests, as defined by § 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Applicants must include this statement as Exhibit C of the FCC Form 175.

33. "Former defaulters"—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 52, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are 50 percent more than the normal upfront payment amounts.

D. Installment Payments and Bidding Credits

34. Neither installment payment plans nor bidding credits will be available in Auction No. 52.

E. Other Information (FCC Form 175 Exhibits D and E)

35. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit E.

F. Minor Modifications to Short-Form Applications (FCC Form 175)

36. After the short-form filing deadline (6 p.m. ET May 21, 2004), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections or proposed orbit location, change the certifying official, or change control of the applicant). See 47 CFR 1.2105. Applicants must make these 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. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 52. The Bureau requests that parties format any attachments to electronic mail as

Adobe® Acrobat® (pdf) or Microsoft® Word documents.

37. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338-2850.

G. Maintaining Current Information in Short-Form Applications (FCC Form 175)

38. Section 1.65 of the Commission's rules requires applicants to maintain the completeness and accuracy of the information in their pending applications and to notify the Commission within 30 days of any substantial change that may be of decisional significance. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

39. On Thursday, May 13, 2004, the FCC will sponsor a free seminar for Auction No. 52 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and DBS service and auction rules.

B. Short-Form Application (FCC Form 175)—Due May 21, 2004

40. In order to participate in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on May 21, 2004. Late applications will not be accepted.

i. Electronic Filing

41. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on May 13, 2004, until 6 p.m. ET on May 21, 2004. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on May 21, 2004.

42. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the

FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 52 Procedures Public Notice*. Technical support is available at (202) 414-1250 (voice) or (202) 414-1255 (text telephone (TTY)); hours of service are Monday through Friday, from 8 AM to 6 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

ii. Completion of the FCC Form 175

43. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 52 Procedures Public Notice*.

iii. Electronic Review of FCC Form 175

44. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. See Attachment C of the *Auction No. 52 Procedures Public Notice* for details on accessing the review system.

45. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. NOTE: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

46. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

D. Upfront Payments—Due June 18, 2004

47. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159, Revised 2/03). All upfront payments must be received at Mellon Bank in Pittsburgh, PA by 6 p.m. ET on June 18, 2004. Failure to deliver the upfront payment by the June 18, 2004 deadline will result in dismissal of the application and disqualification from participation in the auction. For specific

details regarding upfront payments, *see* section III D. of the *Auction No. 52 Procedures Public Notice*.

i. Making Auctions Payments by Wire Transfer

48. Wire transfer payments must be received by 6 p.m. ET on June 18, 2004. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

49. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 209-6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 52." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account.

ii. Amount of Upfront Payment

50. In the *Part 1 Order*, 62 FR 13540, March 21, 1997, the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, 65 FR 52323, August 29, 2000, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments 50 percent greater than non-"former defaulters." For purposes of this calculation, the "applicant" includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules.

51. The amount of the upfront payment will determine the number of bidding units on which a bidder may place bids. In order to bid on a license, otherwise qualified bidders that applied for that license on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the

applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

52. For Auction No. 52 the Commission adopts upfront payments of \$50,000 per channel for the licenses at the 175° W.L. and 166° W.L. orbit locations, and \$100,000 per channel for the license at the 157° W.L. orbit location. Given 32 channels at 175° W.L. and 166° W.L., and 29 channels at 157° W.L., the Commission adopts upfront payments of \$1,600,000 for the 175° W.L. and 166° W.L. licenses, and \$2,900,000 for the 157° W.L. license.

53. The specific upfront payments for each license are set forth in Attachment A of the *Auction No. 52 Procedures Public Notice*. Attachment A of the *Auction No. 52 Procedures Public Notice* also includes the number of bidding units for each license.

54. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units on which it may wish to be active (bidding units associated with licenses on which the bidder has the standing high bid from the previous round and licenses on which the bidder places a bid in the current round) in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Applicants should check their calculations carefully, as there is no provision for increasing maximum eligibility after the upfront payment deadline.

55. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iii. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

56. The Commission will use wire transfers for all Auction No. 52 refunds.

To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that the following pertinent information be supplied to the FCC: Name of Bank; ABA Number; Contact and Phone Number; Account Number to Credit; Name of Account Holder; FCC Registration Number (FRN); Taxpayer Identification Number; Correspondent Bank (if applicable); Account Number. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise.

E. Auction Registration

57. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

58. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) and the other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

59. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, July 7, 2004, should contact the Auctions Hotline at (717) 338-2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

60. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC headquarters, located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Filing

61. The Commission will conduct this auction over the Internet, and telephonic bidding will also be available. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID card is tailored to a specific auction; therefore, 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 overnight mailing, which also includes the confidential bidder identification number.

G. Mock Auction

62. All qualified bidders will be eligible to participate in a mock auction on Friday, July 9, 2004. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

63. The first round of bidding for Auction No. 52 will begin on Wednesday, July 14, 2004. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

64. The Commission will award all licenses in Auction No. 52 in a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of any synergies that may exist among licenses and is administratively efficient.

ii. Maximum Eligibility and Activity Rules

65. The amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder.

66. Note that each license is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A on a bidding unit per dollar basis. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid and hold high bids in a round. As there is no provision for increasing a bidder's eligibility after the upfront payment deadline, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollar amount a bidder may bid on any given license.

67. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction.

68. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits a bid in the current round (*see* "Minimum Acceptable Bids and Bid Increments" in section IV.B.iii). The minimum required activity is expressed as a percentage of the bidder's current bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions (as set forth under "Auction Stages" in section IV.A.iii and "Stage Transitions" in section IV.A.iv), we adopt them for Auction No. 52.

iii. Auction Stages

69. The Commission will conduct the auction in three stages and employ an activity rule. Listed are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses representing at least 50 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule

waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by two.

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 75 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current activity (the sum of bidding units of the bidder's standing high bids and bids during the current round) by four-thirds (4/3).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 100 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be set at current round activity. For example, if a bidder does not have a standing high bid, does not place a bid in the current round, and does not have any activity rule waivers remaining, its eligibility will be reduced to zero, thereby eliminating the bidder from the auction.

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

70. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 52.

iv. Stage Transitions

71. The auction will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) after two consecutive rounds in which only one new high bid is placed in each round.

The Bureau will retain the discretion to change stages unilaterally by announcement during the auction and retain the discretion not to make a transition to the next stage when the conditions are met.

72. Thus, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules are appropriate for use in Auction No. 52.

v. Activity Rule Waivers and Reducing Eligibility

73. Each bidder will be provided three activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

74. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

75. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (see section IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

76. Finally, a bidder may proactively use an activity rule waiver as a means

to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the FCC Automated Auction System) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in which there are no new bids or withdrawals will not keep the auction open.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

vi. Auction Stopping Rules

77. For Auction No. 52, the Commission will employ a simultaneous stopping rule, and retain discretion to invoke a modified version of the stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder.

78. In addition, the Bureau may reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau may exercise these options only in certain circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time.

vii. Auction Delay, Suspension, or Cancellation

79. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. Exercise of this authority is solely within the discretion of the Bureau and its use is not intended to be

a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

80. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

81. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

82. For Auction No. 52, the Commission will adopt minimum opening bids of \$100,000 per channel for the licenses at the 175° W.L. and 166° W.L. orbit locations, and \$200,000 per channel for the license at the 157° W.L. orbit location. Given 32 channels at 175° W.L., and 166° W.L., and 29 channels at 157° W.L., the Commission adopts minimum opening bids of \$3,200,000 for the 175° W.L. and 166° W.L. licenses, and \$5,800,000 for the 157° W.L. license.

83. The minimum opening bids we adopt for Auction No. 52 are reducible at the discretion of the Bureau. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

84. The specific minimum opening bids for each license available in Auction No. 52, are set forth in Attachment A of the *Auction No. 52 Procedures Public Notice*.

iii. Minimum Acceptable Bids and Bid Increments

85. In Auction No. 52, the Commission will employ the use of a 10 percent bid increment. This means that the minimum acceptable bid for a

license is approximately 10 percent greater than the previous standing high bid received on the license. The minimum acceptable bid amount is calculated by multiplying the standing high bid times one plus the increment percentage—*i.e.*, (standing high bid) * (1.10). The result is rounded using the Bureau's standard rounding procedures for minimum acceptable bid calculations: Results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10. The Bureau will retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.

86. In each round, each eligible bidder will be able to place a bid on a particular license for which it applied in any of nine different amounts. The FCC Automated Auction System will list the nine bid amounts for each license.

87. Once there is a standing high bid on a license, the FCC Automated Auction System will calculate a minimum acceptable bid for that license for the following round. The difference between the minimum acceptable bid and the standing high bid for each license will define the bid increment—*i.e.*, bid increment = (minimum acceptable bid) — (standing high bid). The nine acceptable bid amounts for each license consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

88. At the start of the auction and until a bid has been placed on a license, the minimum acceptable bid for that license will be equal to its minimum opening bid. Corresponding additional bid amounts will be calculated using bid increments defined as the difference between the minimum opening bid times one plus the percentage increment, rounded as described, and the minimum opening bid—*i.e.*, bid increment = (minimum opening bid)(1 + percentage increment) {rounded}—(minimum opening bid). At the start of the auction and until a bid has been placed on a license, the nine acceptable bid amounts for each license consist of the minimum opening bid and additional amounts are calculated using multiple bid increments (*i.e.*, the second bid amount equals the minimum opening bid plus the bid increment, the third bid amount equals the minimum

opening bid plus two times the bid increment, etc.).

89. In the case of a license for which the standing high bid has been withdrawn, the minimum acceptable bid will equal the second highest bid received for the license. The additional bid amounts are calculated using the difference between the second highest bid times one plus the minimum percentage increment, rounded, and the second highest bid.

90. The Bureau retains the discretion to change the minimum acceptable bids and bid increments and the methodology for determining the minimum acceptable bids and bid increments if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Automated Auction System. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant.

iv. High Bids

91. At the end of each bidding round, the high bids will be determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a "standing high bid." A "standing high bid" will remain the high bid until there is a higher bid on the same license at the close of a subsequent round. Bidders are reminded that standing high bids count towards bidding activity.

92. In the event of identical high bids on a license in a given round (*i.e.*, tied bids), a Sybase® SQL pseudo-random number generator based on the L'Ecuyer algorithm will be used to assign a random number to each bid. The tied bid having the highest random number will become the standing high bid. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the license. If any bids are received on the license in a subsequent round, the high bid will once again be determined on the highest gross bid amount received for the license.

v. Bidding

93. During a round, a bidder may submit bids for as many licenses as it wishes (subject to its eligibility), withdraw high bids from a previous bidding round, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single

license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

94. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.)

95. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (i) The licenses applied for on FCC Form 175 and (ii) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those licenses for which the bidder applied on its FCC Form 175.

96. In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the passcode generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round after they have completed all of their activity for that round.

97. In each round, eligible bidders will be able to place bids on a given license in any of nine different amounts. For each license, the FCC Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Automated Auction System also includes an import function that allows bidders to upload text files containing bid information.

98. Finally, bidders should use caution in selecting their bid amounts because, as explained in the following section, bidders who withdraw a standing high bid from a previous round, even if mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

99. For Auction No. 52 the Commission adopts bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Commission will limit each bidder to withdrawals in no more than one round during the course of the auction. The round in which

withdrawals are used would be at the bidder's discretion.

100. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count towards bidding activity. These procedures will enhance bidder flexibility during the auction.

101. Once a round closes, a bidder may no longer remove a bid. However, in a later round, a bidder may withdraw standing high bids from a previous round using the withdraw bid function in the FCC Automated Auction System (assuming that the bidder has not reached its withdrawal limit). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g).

Note: Once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

102. The Bureau will limit the number of rounds in which bidders may place withdrawals to one round. This round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in the round. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a license.

103. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the high bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single license, within the same or subsequent auction(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or

exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s).

104. In instances in which bids have been withdrawn on a license that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the license. The *Part 1 Fifth Report and Order* provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

105. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, bids withdrawn, current high bids, new minimum acceptable bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 52 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

106. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

107. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders, down payments and any withdrawn bid payments due.

108. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 52 to 20 percent of its winning bids. In addition, by the same deadline all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," section IV.B.vi. (Upfront payments are

applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Final Payments

109. Each winning bidder will be required to submit the balance of its winning bids within 10 business days after the deadline for submitting down payments.

C. Long-Form Application (FCC Form 312)

110. Within 30 days after release of the auction closing notice, winning bidders must submit a properly completed long-form application (FCC Form 312) and required exhibits for each license won through Auction No. 52. Further filing instructions will be provided to auction winners at the close of the auction.

D. Default and Disqualification

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

E. Refund of Remaining Upfront Payment Balance

112. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 52 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

113. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining

bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request. If a bidder has completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1-C863 Washington, DC 20554.

114. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418-2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578 or Tim Dates at (202) 418-0496.

Federal Communications Commission.

Gary Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 04-5658 Filed 3-11-04; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 26, 2004.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200

North Pearl Street, Dallas, Texas 75201-2272:

1. **Edward B. Baker**, Nacogdoches, Texas, and Thomas E. Baker, II, New Bern, North Carolina, (individually and through power of attorney and various family trusts); Thomas E. Baker, II Revocable Trust (Edward B. Baker and Thomas E. Baker, II, co-trustees); Jean Blount Baker Marital Trust No. 2 (Edward B. Baker and Thomas E. Baker, II, co-trustees); Jean Blount Baker Exempt Marital Trust No. 2 (Edward B. Baker and Thomas E. Baker, II, co-trustees); and Jean Blount Baker (Edward B. Baker, Attorney in Fact); to retain voting shares of Nacogdoches Commercial Bancshares, Inc., Nacogdoches, Texas, and thereby indirectly acquire voting shares of Commercial Bank, Nacogdoches, Texas.

Board of Governors of the Federal Reserve System, March 8, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04-5593 Filed 3-11-04; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 29, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. **Carlos Alejandro Safie**, Pinecrest, Florida; to retain voting shares of Executive Banking Corporation, and thereby indirectly retain voting shares of Executive National Bank, both of Miami, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. **Gary Arthur Messersmith**, Houston, Texas, as trustee, to acquire shares of First Community Bancshares, Inc., Houston, Texas, and thereby indirectly acquire shares of FCBI Delaware, Inc., Wilmington, Delaware, and its subsidiaries, First National Bank of Texas, Killeen, Texas, and Fort Hood National Bank, Fort Hood, Texas.

Board of Governors of the Federal Reserve System, March 9, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04-5702 Filed 3-11-04; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 5, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528: