Dated: January 22, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–1774 Filed 1–21–98; 2:17 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–37]

Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction

Released: January 9, 1998.

Over the past weeks, the Wireless Telecommunications Bureau (''Bureau'') has received numerous inquiries concerning the auction rules and eligibility requirements for the Local Multipoint Distribution Service (''LMDS'') auction scheduled to commence on February 18, 1998. In this Public Notice, the staff provides guidance on a range of issues involving the rules for the LMDS auction.

The service and auction rules pertaining to LMDS are found in parts 1 and 101 of the Commission's rules (Title 47 of the Code of Federal Regulations). The Commission's rules governing eligibility for bidding credits were established to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and/or women (collectively referred to as ''designated entities'' or ''DEs'') are provided meaningful opportunities to compete in the provision of LMDS. These rules are primarily addressed in the *LMDS Second Report and Order,* the *LMDS Order on Reconsideration,* and the *LMDS Second Order on Reconsideration.* Additional auction information is provided to potential bidders in a comprehensive Bidder Information Package. This package contains guidelines regarding pre-auction procedures, the auction event, and post-auction procedures. (Interested parties can order an LMDS Bidder Information Package by calling (888) 225–5322, Option #2. Applicants are entitled to one free LMDS Bidder Information Package; additional copies cost $16 each.) The Bureau will release a public notice setting forth minimum opening bids for the LMDS auction prior to the FCC Form 175 short form filing deadline.

Many of the inquiries the Bureau has received are based on the inquiring parties' specific circumstances. The Bureau has recast the most frequently asked questions in more general terms in order to provide guidance to a larger group of interested parties. Potential applicants should understand that the advice and rule interpretations provided in this Public Notice constitute informal staff opinion, not official Commission decisions or rulings.

I. General Ownership Issues

Q: When disclosing ownership information on the FCC Form 175, should applicants report all entities that hold a five percent or greater voting (control) interest or other economic interest?

A: In previous services (*e.g.,* broadband PCS), the Commission specifically required that applicants report all entities that held interests in the applicant of five percent or more that also held or were applying for CMRS or PMRS licenses. For LMDS, applicants must comply with the general reporting rule set forth in Part 1 of the Commission's rules, which is less specific about which entities must be identified. By identifying on Attachment A to their FCC Forms 175 all entities holding five percent or greater interests in the applicant that also hold or are applying for CMRS or PMRS licenses, applicants will assist themselves in identifying entities with which they must avoid contact pursuant to the anti-collusion rule. Applicants should be aware that at the long-form application stage, they will be subject to the reporting requirements contained in the newly adopted Part 1 ownership disclosure rule.

Q: Can new non-controlling investors be added after the FCC Form 175 is filed and throughout the auction?

A: New non-controlling investors can be added after the FCC Form 175 is filed and throughout the duration of the auction, provided their addition does not result in a change of control of the applicant. An applicant should amend its FCC Form 175 within 10 business days of any change, and should provide notice of the change by letter addressed to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 2025 M Street, N.W., Suite 5202, Washington, D.C. 20554, with a copy filed with the Office of the Secretary, 1919 M Street, N.W., Washington, D.C. 20554.

Q: When an applicant is a consortium, can only one member of the consortium conduct bidding during the auction? What if a member of a consortium decides to withdraw during the auction?

A: A consortium is defined as ''a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a very small business, small business or entrepreneur.'' Where an applicant is a consortium, the gross revenues of its members are not aggregated. The definition of consortium does not prohibit one member from placing the bids for the consortium as a whole.

Because each member of a consortium must individually satisfy the definition of a very small business, small business, or entrepreneur at the FCC Form 175 filing deadline, members may withdraw during the course of the auction, or afterward, without endangering the treatment of the consortium. The withdrawal of a member would merely change the composition of the consortium, and should be reflected in a filing with the Commission. On the other hand, adding a new member to a consortium after the FCC Form 175 filing deadline will not be permitted because the filing deadline is the cut-off date for determinations of whether applicants meet the definitions of very small business, small business, or entrepreneur.

II. Foreign Ownership Issues

Q: How much foreign ownership of a licensee is permissible? Can LMDS applicants seek more than 25 percent indirect foreign ownership?

A: Section 310(a) of the Communications Act of 1934, as amended (''Communications Act''), prohibits granting any wireless license to a foreign government or a representative thereof. Section 310(b) of the Communications Act imposes restrictions on the foreign ownership of common carrier, broadcast, and aeronautical licensees. Under this section, the Commission may not grant a common carrier wireless license to an alien, the representative of an alien, any corporation organized under the laws of any foreign government, or any corporation of which more than 20 percent is owned by foreign entities. Section 310(b)(4) imposes additional restrictions on the foreign ownership of the parent corporation of a common carrier licensee, specifically that no common carrier license shall be granted to or held by ''any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens * * * or by any corporation organized under the laws of a foreign country . . . if the Commission finds that the public interest will be served by the refusal or revocation of such license.'' Under the *Foreign Participation Order,* the Commission recently liberalized its

rules for determining when refusal or revocation would serve the public interest. The final rules set forth in the *Foreign Participation Order* will not become effective before February 9, 1998. Any applicant that is controlled by a corporation with more than 25 percent foreign ownership, or which seeks to exceed that limit, must inform the Commission in a separate petition for declaratory ruling. The Commission will accept petitions for declaratory ruling immediately, but will not necessarily rule on them prior to the auction start date. Because applicants must certify on their short form applications that they are in compliance with the foreign ownership provisions of Section 310 of the Communications Act, applicants filing petitions for declaratory rulings must reference their pending petitions in their short form applications. Applicants seeking foreign investment should familiarize themselves with the *Foreign Participation Order,* particularly Section III.D. That order is available from the Commission's web site at <http://www.fcc.gov/ib/wto.html>.

III. Bidding Credits and Eligibility Issues

Q: What constitutes gross revenues as described in 47 CFR 101.1112?

A: Gross revenues include all income received by an entity, whether earned or passive, before any deductions are made for the costs of doing business, as evidenced by audited financial statements for the preceding three years. If an entity was not in existence for the entire preceding three years, gross revenues shall be evidenced by audited financial statements of the entity's predecessor-in-interest, or if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate. The Commission will evaluate applicants' gross revenues as they are reflected in financial statements prepared in accordance with generally accepted accounting principles.

Q: Now that the auction has been rescheduled for February 18, 1998, will the Commission require applicants to provide audited financial statements for 1997?

A: Applicants must furnish evidence of their gross revenues based upon their most recently-completed audited financial statements. Thus, if audited financial statements for calendar year 1997 have not been fully prepared by the FCC Form 175 filing deadline of January 20, 1998, audited statements for the years 1994, 1995, and 1996 will suffice.

Q: Are the gross revenues of an applicant's affiliates counted in determining that applicant's eligibility for a bidding credit?

A: Yes. An applicant must aggregate the gross revenues of all affiliates, as defined in 47 CFR 101.1112(h), in order to determine its bidding credit eligibility.

Q: When determining eligibility for bidding credits, will the gross revenues of individuals who are affiliates be included in determining the bidder's gross revenues? Is there a conceivable instance when an individual's gross revenues will affect an applicant's eligibility for a bidding credit?

A: This issue has been raised on reconsideration in another proceeding and the Bureau refrains from directly addressing it at this point. However, the Bureau notes that for LMDS, the Commission did not adopt a rule that attributes personal net worth for purposes of determining eligibility. Personal net worth has been defined as ''the market value of all assets (real and personal, tangible and intangible) owned by an individual, less all liabilities (including personal guarantees) owed by the individual in his individual capacity or as a joint obligor.'' In other services (*i.e.*, broadband PCS), the Commission eliminated a personal net worth test, concluding that ''the affiliation rules make the personal net worth rules largely unnecessary since most wealthy individuals are likely to have their wealth closely tied to ownership of another business.''

Q: Is there a minimum equity requirement for controlling small business principals?

A: No. However, the Bureau cautions that the absence of equity in the hands of controlling small business principals could raise questions about whether the applicant itself qualifies as a *bona fide* small business. For instance, if a single party holds *de jure* control, as evidenced by ownership of 50.1 percent of the voting stock, this party must also hold *de facto* control in order to be considered a controlling principal. If no single party has *de jure* control of the applicant, *de facto* control factors will determine who controls the applicant. By way of comparison, in broadband PCS, controlling principals were required to hold at least 15 percent of the applicant's total equity under one particular business structure.

Q: Does the bidding credit schedule adopted in the Commission's Part 1 Proceeding apply to LMDS?

A: No. LMDS has a specific bidding credit rule that is not affected by the Part 1 rule changes.

IV. Anti-Collusion Rule Issues

Q: What conduct constitutes a violation of the Commission's anti-collusion rule?

A: After the deadline for submission of the FCC Form 175, applicants may not discuss the substance of their bids or bidding strategies with other bidders that have applied to bid in the same geographic license areas, with the exception of those with which they have entered into agreements identified on the FCC Form 175. The term ''applicant'' includes the entity that submits an application for auction participation, owners of five percent or more of that entity, and all officers and directors of that entity. (*But see* part 1 at ¶ 164 (which changes the attribution level of the anti-collusion rule to 10 percent; however, this rule does not apply to the LMDS auction. The new part 1 rules, with the exception of rules pertaining to post-auction payment and long-form application obligations, will apply only to auctions commencing after the new rules' effective date)). The rule also prohibits the transfer of indirect information which affects, or could affect, bids or bidding strategy. All bidding arrangements must be disclosed on an applicant's short form application. Auction applicants who have applied for licenses in the same geographic areas, and who are also licensees or applicants for licenses in the same or competing services, must affirmatively avoid all communications with each other that affect, or have the potential to affect, their bids or bidding strategy. This does not mean that all business negotiations between bidders for the same markets are prohibited; however, the Bureau recommends that bidders for the same markets exercise caution when engaging in such discussions.

Q: Do public statements such as ''we want to win 10 million pops'' or ''we want to win top markets'' or ''we have $5 million to spend'' constitute disclosures of bids or bidding strategy?

A: Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy. The Bureau therefore urges bidders for common markets to exercise caution when making public statements about their bids or bidding strategies.

Q: If an applicant files an FCC Form 175 prior to the filing deadline of January 20, 1998, may this applicant speak with other potential applicants during the time between its filing and the deadline? In other words, at what

point are two parties considered to be competing for the same market?

A: An FCC Form 175 is considered officially filed upon the filing deadline, regardless of whether it was actually filed one day or one month prior to the deadline. Changes to electronically filed applications can be made any time prior to the filing deadline on January 20, 1998, and applicants cannot view each others' electronically filed applications prior to that deadline. Thus, parties are not considered to be competing for the same market until the window for submitting applications closes at 5:30 p.m., ET, on January 20, 1998.

Q: Can an individual act as the authorized bidder and place bids for two or more applicants who are competing for one or more of the same markets? What if different individuals who are employed by the same organization place bids for applicants in competing markets?

A: 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, a violation could similarly occur. In such instances, the Bureau strongly encourages applicants to certify on their application that precautionary steps (*e.g.*, establishing a ''Chinese wall'') have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

V. Technical Issues

Q: In bands where Mobile Satellite Service (''MSS'') feeder links are permitted, is uplink transmission (subscriber end) allowed if there is no MSS licensee operating?

A: No. The interference analyses conducted indicated that subscribers' transceivers potentially are major interferers to MSS feeder link earth station satellite receivers because of the elevation angles many will be employing. The satellites to be deployed in these MSS systems will be orbiting in different planes over the United States. Therefore, there is the potential for them to become aligned with the beam of a subscriber transceiver at any location in the United States. To review those analyses, see the Report of the LMDS/FSS 28 GHz Band Negotiated Rulemaking Committee, CC Docket No. 92–297 (September 23, 1994).

Q: What are the deadlines for 31 GHz incumbents to vacate the 31 GHz middle band?

A: Incumbent 31 GHz licensees were provided 75 days after the effective date of the LMDS service rules to request modification of their licenses to relocate to the outer two 75 megahertz blocks of the 31 GHz band. Failure to do so means that such incumbent operations become secondary to LMDS operations in the middle band. This means that LMDS operators are not required to protect these incumbent operations from interference, nor are the incumbent operations permitted to cause interference to LMDS systems. Of course, these incumbents can relocate to other bands or other transmission media at any time.

VI. Miscellaneous

Q: Will the Commission inform applicants of the minimum opening bid for each BTA license prior to the FCC Form 175 filing deadline of January 20, 1998?

A: Yes. The Bureau released a Public Notice on October 17, 1997, seeking comment on minimum opening bid proposals. Comments were due on November 5, 1997, with reply comments due on November 10, 1997. A subsequent Public Notice extended the reply comment deadline to December 1, 1997. Prior to January 20, 1998, the Bureau will release a public notice setting forth a minimum opening bid for each license.

Q: What is the Commission's calculation to convert ILEC access lines to pops for purposes of the 10 percent in-region calculation?

A: The Commission has not developed a calculation to convert access lines to pops. The ILEC should determine the geographic area that it serves and then use census data for determining the population of that area.

Q: What are the consequences if an applicant fails to complete properly the FCC Form 175?

A: An applicant is solely responsible for the true, accurate, and complete submission of its FCC Form 175, and incomplete or inaccurate FCC Forms 175 may be rejected or required to be refiled. The Commission checks FCC Forms 175 for deficiencies that would affect their initial acceptability, and will act to apprise applicants of deficiencies after initial review. Applicants are then given an opportunity to cure such deficiencies. Once a corrected application is resubmitted, however, no major amendments can occur. This would include, for example, changes to bidding credits.

Q: Does the must-carry rule apply to LMDS for license holders who wish to provide television service?

A: No. According to the Communications Act, the must-carry rule applies only to cable operators. Cable operators are defined as persons who provide cable service to subscribers, and cable service is defined as one-way transmission of video or other programming by means of a set of closed transmission paths. As a two-way wireless service, LMDS is not subject to must-carry requirements.

Q: Will the bidding software be supported by Windows 95?

A: While the auction software has been known to work with Windows 95, Microsoft has not yet affirmed supportability. Until Microsoft makes that determination, use of the auction software with Windows 95 is solely at the bidder's own risk.

Q: Will the Commission provide applicants a list of proposed and licensed MSS feeder link earth station sites?

A: Yes. The list is attached to this Public Notice as Attachment A.

Q: Is the Commission considering the authorization of any other two-way video services in the near future?

A: Yes. Bidders should be aware that the Commission's Mass Media Bureau is conducting a proceeding in which additional spectrum for the Multipoint Distribution Service (''MDS'') is being discussed. Comments in that proceeding were due December 9, 1997, and reply comments are due January 8, 1998.

Bidders should also be aware that the 39 GHz band has the potential for point-to-multipoint service.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–1608 Filed 1–22–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved by Office of Management and Budget

January 16, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection(s) pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall