

forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

28. *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.*

29. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 49 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

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

30. 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. 49 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

vi. National Environmental Policy Act ("NEPA") Requirements

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

C. Auction Specifics

i. Auction Date

32. The auction will begin on Wednesday, May 28, 2003. 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

33. Auction No. 49—Lower 700 MHz Band

iii. Bidding Methodology

34. The bidding methodology for Auction No. 49 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

35. Listed are important dates associated with Auction No. 49:
Auction Seminar—April 2, 2003
Short-Form (FCC Form 175) Filing Window Opens—April 2, 2003; 12 p.m. ET

Short-Form (FCC Form 175) Application Deadline—April 11, 2003; 6 p.m. ET

Upfront Payments (via wire transfer)—May 2, 2003; 6 p.m. ET
Mock Auction—May 22, 2003
Auction Begins—May 28, 2003

v. Requirements for Participation

36. One commenter, Banks, requests that the Bureau limit eligibility in Auction No. 49 to parties that qualified to participate in Auction No. 44. Banks argues that such an eligibility limitation is mandated by the Auction Reform Act. Banks bases its argument on language from the Auction Reform Act, which limited the entities eligible to participate in Auction No. 44 to "those entities that were qualified entities, and that submitted applications to participate in auction 44, by May 8, 2002, as part of the original auction 44 short form filing deadline." Banks contends that this restriction on eligibility applies to the *spectrum blocks* identified rather than a specific auction of those spectrum blocks. Thus, Banks concludes that the eligibility limitation extends to any subsequent auction of those same blocks of spectrum. Banks argues that the only other possible interpretation of the Auction Reform Act is that it does not permit further auctions of the C and D block spectrum until the Commission goes forward with the auction of the remainder of the 700 MHz spectrum. Only two commenters, Qualcomm and C&S, address Banks's assertion that the Auction Reform Act limits who is eligible to participate in Auction No. 49. Both Qualcomm and C&S oppose Banks's interpretation of the Auction Reform Act. As we explain, an analysis of the Auction Reform Act establishes that Banks's reading of the statute is incorrect.

37. In the Auction Reform Act, among other things, Congress provided that the Commission not commence or conduct Auction No. 44 on June 19, 2002. In the following subsection, Congress indicated that this prohibition on conducting Auction No. 44 did not apply to the Lower 700 MHz C and D block licenses, established a restriction on the entities eligible to bid in the auction of these licenses, and established a deadline for the auction of such licenses and the deposit of the auction proceeds in the U.S. Treasury. A plain reading of these provisions shows that the limitations on who qualified to bid on the C block and the D block licenses only applied to the conduct of Auction No. 44 and not to any subsequent auction. The restriction on eligible bidders is contained in the