

available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/53/>.

## I. General Information

### A. Introduction

1. The *Auction No. 53 Procedures Public Notice*, announces that the auction of licenses in the Multichannel Video Distribution and Data Service ("MVDDS") (Auction No. 53) has been rescheduled for January 14, 2004. In addition, the Wireless Telecommunications Bureau ("Bureau") announces the procedures and minimum opening bids for this auction. On January 30, 2003, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices and/or minimum opening bids and the procedures to be used in Auction No. 53. The Bureau received one comment and one reply comment in response to the *Auction No. 53 Comment Public Notice*, 68 FR 6167 (February 6, 2003).

#### i. Background

2. On April 15, 2003, the Commission released the *Second Further Notice of Proposed Rule Making*, 68 FR 19486 (April 21, 2003), which sought further comment on the appropriate service area definition for MVDDS and on whether the build out requirement for this service should be modified. On July 7, 2003, the Commission released the *Third Report and Order*, 18 FCC Rcd 13468 (2003), in which it decided to license MVDDS on the basis of Designated Market Areas ("DMAs")

rather than Component Economic Areas ("CEAs") and adopted a five-year build out requirement.

3. MVDDS licensees may provide any digital fixed one-way non-broadcast service including direct-to-home/office wireless service. Mobile and aeronautical services are not authorized. Two-way services may be provided by using other spectrum or media for the return or upstream path. MVDDS providers will share the 12.2–12.7 GHz band on a co-primary basis with non-geostationary satellite orbit ("NGSO") fixed-satellite services ("FSS") and on a non-harmful interference basis with incumbent Direct Broadcast Satellite ("DBS") providers. The technical criteria for sharing established in the *MVDDS Second Report and Order*, 67 FR 43031 (June 26, 2002), ET Docket No. 98–206, released May 23, 2002, are designed to protect NGSO FSS and DBS operations from harmful interference.

#### ii. Licenses To Be Auctioned

4. Auction No. 53 will offer 214 licenses based on DMAs and FCC-defined DMA-like service areas encompassing the United States, Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. The 214 service areas are based on the 210 DMAs delineated by Nielsen in its publication entitled "U.S. Television Household Estimates" dated September 2002 (which lists estimates of television households "as of January 2003" and can be found at Nielsen's Web site at <http://www.nielsenmedia.com>) plus the

following four FCC-defined service area additions: Alaska—Balance of State (all geographic areas of Alaska not included in Nielsen's three DMAs for the state: Anchorage, Fairbanks, and Juneau), Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, and American Samoa. Potential applicants should note that the boundaries of the DMA-based service areas of the 214 licenses offered in Auction No. 53 will not change, even if Nielsen alters the boundaries of its DMAs in the future, as it has in the past. Each license will authorize the use of one block of unpaired spectrum in the 12.2–12.7 GHz band.

5. Applicants should note that Nielsen owns the copyright to the DMA listing. The Commission's assignment of MVDDS licenses will not confer on applicants or licensees the right to use Nielsen's DMA mark, regions, or data, and such right must be obtained from Nielsen. In addition, the Commission does not have the right to republish DMA regions or data. Therefore, the Commission will not provide the populations, counties, or a map of DMAs to applicants for Auction No. 53 either before or during the auction. Applicants wishing to obtain such DMA data and maps will need to acquire them from Nielsen.

6. A complete list of the licenses available in Auction No. 53 is included in Attachment A of the *Auction No. 53 Procedures Public Notice*. The characteristics of these licenses are shown in the following table:

Frequencies	Bandwidth	Geographic Area Type	No. of Licenses
12.2–12.7 GHz .....	500 MHz .....	DMA .....	214

### B. Rules and Disclaimers

#### i. Relevant Authority

7. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to MVDDS contained in title 47, part 101, 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 bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 53 Procedures Public Notice*; the *Auction No. 53 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 applicants 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). Thus, applicants for any of the same geographic license areas must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect, bidding or bidding strategy. 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