

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

36. 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.

37. 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 for licenses in the same geographic license area 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.

D. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

38. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.

39. In the *Second Report and Order*, the Commission determined that three levels of bidding credits are appropriate for MVDDS. Therefore, bidding credits will be available to entrepreneurs, small businesses, and very small businesses,

and consortia thereof, as follows for Auction No. 53:

- A bidder with attributed average annual gross revenues of not more than \$40 million for the preceding three years ("entrepreneur") will receive a 15 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than \$15 million for the preceding three years ("small business") will receive a 25 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than \$3 million for the preceding three years ("very small business") will receive a 35 percent discount on its winning bids.

Bidding credits are not cumulative; a qualifying applicant receives the 15 percent, 25 percent, or 35 percent bidding credit on its winning bid, but only one credit per license.

40. Bidders should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

ii. Tribal Land Bidding Credit

41. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. See section V.F. of the *Auction No. 53 Procedures Public Notice*.

42. *Attribution for entrepreneur, small business, and very small business eligibility.* In determining which entities qualify as entrepreneurs, small businesses, or very small business, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

43. Each member of a consortium of entrepreneurs, small businesses or very small businesses must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests.

iii. Eligibility Restrictions for Cable Operators

44. Applicants should note that § 101.1412 of the Commission's rules provide certain eligibility restrictions

for cable operators. Specifically, no cable operator, nor any entity owning an attributable interest in a cable operator, shall have an attributable interest in an MVDDS license if such cable operator's service area significantly overlaps the MVDDS license area.

iv. Supporting Documentation

45. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as entrepreneurs, small businesses, or very small businesses (or consortia of entrepreneurs, small businesses, or very small businesses) for this auction. Applicants should also note that they must fulfill the certification requirements of § 101.1412(g)(2) of the Commission's rules relating to complying with the eligibility restrictions for cable operators.

46. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

47. *Entrepreneur, small business, or very small business eligibility (Exhibit C).* Entities applying to bid as entrepreneurs, small businesses, or very small businesses (or consortia of entrepreneurs, small businesses, or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of entrepreneurs, small