

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Auction of Construction Permits for Low	)	
Power Television and TV Translator Stations	)	AU Docket No. 19-61
Scheduled for September 10, 2019	)	GN Docket No. 12-268
	)	MB Docket No. 16-306
Comment Sought on Competitive Bidding	)	
Procedures for Auction 104	)	

To: Chief, Video Division, Media Bureau

**REPLY COMMENTS OF VENTURE TECHNOLOGIES GROUP**

Venture Technologies Group, LLC (“VTG”) hereby submits these Reply Comments in response to the above-referenced Public Notice issued by the Incentive Auction Task Force and Media Bureau, in conjunction with the Office of Economics and Analytics, regarding the proposed auction to resolve certain groups of mutually exclusive construction permits filed by low power television and TV translator stations displaced as a result of the post-Incentive Auction reorganization.<sup>1</sup> VTG has ownership interests in full-power, Class A, and low power television (“LPTV”) stations. VTG is the licensee of four stations with applications currently designated for auction in Auction 104: KEBK-LD, Bakersfield, CA (MX035); W34DI-D, New York, NY and WNJJ-LD, New York, NY (MX051); and W25FA-D, West Orange, NJ (MX090).

VTG appreciates the Commission’s efforts to expeditiously resolve mutual exclusivities among displacement applications filed by LPTV and TV translator stations, minimizing the

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<sup>1</sup> *Auction of Construction Permits for Low Power Television and TV Translator Stations Scheduled for September 10, 2019; Comment Sought on Competitive Bidding Procedures for Auction 104*, Public Notice, AU Dkt. No. 19-61, GN Dkt. No. 12-268, MB Dkt. No. 16-306, DA 19-229 (IATF/MB rel. Mar. 29, 2019) (the “Comment PN”).

potential disruption to those stations and their viewers from the post-Incentive Auction transition. As such, VTG is generally supportive of the Commission's proposals.

VTG seeks to comment, however, on three issues raised in the initial comments.

*First*, VTG agrees with the commenters who encouraged the FCC to resolve all informal objections and provide remaining applicants with ample time to explore the possibility of settlement before beginning the auction process. During the mutual exclusivity resolution process, it is apparent that some applicants abused the process in the belief that they could increase their negotiating leverage by filing meritless informal objections against other applicants in the same mutual exclusivity group. Although the Media Bureau has now resolved all of the objections previously filed against applications designated for auction, it must definitively ensure that all stations participating in the auction are eligible to do so. Specifically, the Commission should: (1) ensure that any objection filed before the short form application deadline has been fully and finally decided; (2) verify that the license of each applicant is valid and in good standing; and (3) confirm that any remaining applications in an MX group are mutually exclusive. These actions will provide certainty regarding the status of auction participants and ensure a full and fair auction.

*Second*, the Commission should clarify that it will not award more than one construction permit in each MX group and, therefore, that it will not tolerate collusive and anti-competitive agreements between only some of the applicants in each group.

*Finally*, the Commission should ignore the comments of TVC NY Licensee, LLC ("TVC") as moot in light of the Media Bureau's denial of the underlying informal objections filed by New York Spectrum Holding Company ("NYSHC") and K Licensee, Inc. ("K Licensee") that TVC sought to support.

**1. The Commission Should Verify the Eligibility of All Stations Before Proceeding with Auction 104.**

VTG agrees with all of the commenters that it is imperative that the FCC fully and finally resolve all disputes regarding the validity of stations' displacement applications before it can begin the auction process.<sup>2</sup> VTG believes the Commission must take three steps before the auction begins to ensure the validity of the auction: (1) fully and finally deciding all objections raised before the short form application deadline; (2) confirming the validity of the underlying licenses of each of the stations included on Attachment A to the Comment PN; and (3) confirming that any remain applications in an MX group remain mutually exclusive.

First, the Commission should ensure that any objection filed before the short form application deadline has been fully and finally decided before the auction begins. It appears that the Media Bureau has now disposed of the informal objections previously filed against 6 of the 19 mutually exclusive applications in Auction 104, which involved 3 of the 6 mutual exclusivity groups. However, the Media Bureau did not release its letter orders resolving the last of the pending informal objections until April 26, 2019. The FCC should allow such orders (and any subsequent orders on objections filed before the short form application deadline) to become final and promptly resolve any petitions or applications for review that may be filed in response to the letter orders well before the auction begins.

Second, the Commission should verify that the license of each applicant is valid and in

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<sup>2</sup> See Brief Comments of One Ministries, Inc. (Apr. 1, 2019) ("One Ministries Comments") (requesting that the Commission "allow all remaining informal objections and petition for reconsideration to be ruled on first and for the remaining parties to be given the opportunity to settle without there being unresolved proceedings among the MX'ed applications"); Brief Comments of Michael Do – Chief Operating Officer (Apr. 3, 2019) ("NYSHC Comments") (requesting that the Commission review and dispose of all pending informal objections prior to auction); Brief Reply Comments of One Ministries, Inc. (Apr. 16, 2019) ("One Ministries Reply") ("[A]ll pending informal objections against applications listed among the MX groups for the auction of displaced LPTV applications should first be acted upon before proceeding with the auction").

good standing before proceeding with the auction. It is VTG's understanding that a number of the stations included in Attachment A to the Comment PN currently are not operating and have not been operating since well-before the post-Incentive Auction transition began. In some cases, these stations have failed to request authority from the FCC to go silent. It is imperative that the Commission resolve the status of these stations well before the auction begins (including fully and finally addressing any new informal objections filed before the short form application deadline).

Third, the Commission should confirm that any remaining applications in an MX group are mutually exclusive. In the case of some multi-station MX groups, there are one or more applications that are not mutually exclusive with each other, but are each mutually exclusive with one or more other applications in the group. Accordingly, as the Media Bureau determines that certain applications are not eligible for the auction, it should reevaluate the remaining applications and issue a revised version of Attachment A.<sup>3</sup>

Any continued uncertainty regarding the status of potential auction participants undermines the upcoming auction in two different but equally important ways. For one, the pendency of the six informal objections has already served as a barrier to private settlements that could obviate the need for an auction at all. As one of the applicants in MX008 observed, “[d]ue to unresolved proceedings among the MX’ed applications, it was difficult . . . to discuss a fair, equitable settlement among the MX applicants.”<sup>4</sup> In VTG’s experience, as long as an objecting

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<sup>3</sup> For example, the Media Bureau recently dismissed K Licensee’s application, File No. 0000052801, when K Licensee applied to move W26DC-D to a new channel. Accordingly, the Commission should remove W26DC-D from Attachment A and confirm that the remaining applications remain mutually exclusive.

<sup>4</sup> NYSHC Comments; *see also* One Ministries Comments (explaining that although several parties in that group desired to settle, “this has been impossible to do, since it is still uncertain which applications are qualified and which

party has a reason to believe it could prevail on its objection, it lacks the incentive to settle. Once the Media Bureau's resolution of the pending objections becomes final, however, the parties' motivations are likely to change and the prospect for settlement will increase as all parties face the prospect of losing in an auction. The Commission should allow ample time for such resolutions to come to fruition.

Furthermore, a failure to fully and finally resolve the status of each applicant before the auction process begins will almost certainly distort the results of the auction. If there is any uncertainty regarding a station's status, that uncertainty will affect the bidding of all stations in an MX Group and threatens to leave the auction with a winning bidder that cannot build the permitted facilities because its auction is invalid. To remove any uncertainty, the Commission should confirm the operating status of each applicant before proceeding with Auction 104.

## **2. The Commission Should Prohibit Bidding Activities That Result in More than One Winner.**

VTG agrees with the Commission's conclusion in the Comment PN that "no more than one construction permit will be awarded for each MX group"<sup>5</sup> and believes the FCC must go further to clarify the logical extension of that statement: that bidders cannot enter into collusive and anti-competitive pre-auction agreements that will result in some, but not all, of the members of a mutual exclusivity group sharing a channel. In at least one of the MX groups in which a VTG station is involved, two of the other parties (TVC and NYSHC) have entered into a settlement agreement that expressly contemplates the parties "collaborat[ing] during the bidding process" and "if permitted by the FCC to do so" to "bid jointly with the objective of prevailing in

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ones aren't."); One Ministries Reply ("It appears that for the majority of the remaining MX groups that a settlement would have still be possible if not for the uncertainty of which applicants were qualified.")

<sup>5</sup> Comment PN ¶ 6.

the auction and achieving grant of both of their Displacement Applications.”<sup>6</sup> This, of course, runs contrary to the unequivocal statement in the Comment PN that the Commission will not award more than one construction permit for each MX group. It also reflects the flagrant attempt by two members of an MX group to illegally collude to obtain an unfair bidding advantage in the auction. The Commission must make clear that such anti-competitive activity is impermissible and that only settlement agreements that fully resolve an MX group will be accepted.

The Commission’s rules expressly prohibit the collusive practices contemplated by TVC and NYSHC. Specifically, Section 1.2105(c) of the Commission’s Rules prohibits applicants from “cooperating or collaborating with respect to . . . the substance of their own, or each other’s . . . bids or bidding strategies.”<sup>7</sup> The only exceptions – agreements that are “solely operational,” agreements to form “consortia or joint ventures,” and agreements to transfer or assign licenses that do not relate to the licenses at auction – are inapplicable here. The Commission has further clarified that even compliance with the FCC’s prohibition on communications “does not insulate parties from the antitrust laws.”<sup>8</sup> Applicants should not be able to circumvent the FCC’s rules designed to promote fair and transparent auctions by entering into pre-auction collusion agreements. Rather, it is imperative that the Commission clarify that Paragraph 6 of the Comment PN means what it says, and bidders may not enter into settlement agreements that contemplate anti-competitive activity during the auction or the award of multiple construction permits once the auction is complete.

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<sup>6</sup> FCC File No. 0000048135.

<sup>7</sup> 47 C.F.R. § 1.2105(c).

<sup>8</sup> See *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Red. 10794 ¶ 43 (2015).

**3. The Commission Should Disregard TVC's Comments, Which Are Now Moot.**

The Commission should completely disregard TVC's "comments,"<sup>9</sup> which, notwithstanding their adjective-laden hyperbole, are nothing more than an untimely pleading in support of the informal objections filed by TVC's proposed channel sharing partner, NYSHC, and another applicant, K Licensee, that the Media Bureau has denied.<sup>10</sup> Accordingly, TVC's comments are moot and can be disregarded.

For the foregoing reasons, the Commission should: (1) reach a final resolution regarding the status of each application before Auction 104 begins; (2) prohibit anti-competitive and collusive arrangements between potential bidders in Auction 104; and (3) disregard TVC's comments in this proceeding.

Respectfully submitted,

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<sup>9</sup> Comments of TVC NY License LLC (Apr. 15, 2019) ("TVC Comments").

<sup>10</sup> See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to Venture Technologies Group, LLC (Apr. 26, 2019).