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IDAHO

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United States Senate

WASHINGTON, DC 20510

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December 22, 2014

Chairman Thomas Wheeler
Federal Communications Commission
445 Twelfth Street, SW, Room 8-C445
Washington, DC 20554

WTB
Spectrum
Incentive
Auction
239

Chairman Wheeler:

I write to request expeditious review of Mr. Ted Austin's appeal for waiver with the Federal Communication Commission. It has been brought to my attention that my constituent, Ted Austin, a small market radio broadcaster, has been awaiting a decision on his appeal for waiver regarding the Federal Communications Commission's (FCC) decision for over four years.

Mr. Austin was named the winner of the auction for FM broadcast channel (Channel 277A) to a remote part of Wyoming and Colorado on Feb. 23, 2006. Mr. Austin was one day late with his down payment due to a family emergency. At this time, no concerns from the FCC were communicated to Mr. Austin. The FCC continued to accept a filing fee of \$2,980 in April 2006; then 18-months later the FCC informed Mr. Austin that he no longer had the winning bid because his down payment was one day late. Mr. Austin filed a waiver request and this was denied in 2010. He is still waiting for a decision on his appeal for waiver over four years later. All pertinent paperwork is attached for your review.

My staff has been following this case for nearly two years, regularly checking with your legislative affairs office for updates.

I appreciate your timely attention to this matter and look forward to your response.

Sincerely,



Mike Crapo
United States Senator

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July 10, 2012

The Honorable Mike Crapo
239 Dirksen Senate Office Building
Washington, D.C. 20510

MIKE CRAPO
WASHINGTON, D.C.

RE: Local Radio Service to Baggs WY

Dear Senator:

I am a small market radio broadcaster with over thirty years of experience and am seeking your assistance in a matter before the Federal Communications Commission. In January 2006, I participated in an FCC auction of FM broadcast channels (FM Auction 62) after making an initial auction "deposit" of \$1500 and on February 8, 2006 was declared the winning bidder for channel 277A at Baggs, Wyoming. I was required, by auction rules, to make a *down payment* on my winning bid by February 23, 2006 however, due to a family medical emergency and a subsequent error by my bank; I did not make the required down payment (\$2,700) until February 24, 2006, one day late!

On April 19, 2006, the FCC "accepted" my technical application (Form 301) for Baggs as well as a filing fee of \$2,980 however, nearly 18 months later, on September 13, 2007 I received a call from the FCC informing me that because my winning bid down payment was one-day late, they were declaring me in "default" of the auction rules and dismissing my application for Baggs. On September 28, 2007, through my FCC legal counsel, I filed a waiver request with a detailed explanation of the events that caused the one-day delay in the payment arriving at the Commission. A copy of that waiver request is enclosed with this letter. On February 18, 2010 my waiver request was denied. A copy of the FCC's order is also enclosed. I have again appealed the Media Bureau's action and will be meeting in-person at the FCC next month in hopes of obtaining a reversal.

Obviously I am dissatisfied with the FCC's decision but am also perturbed at the amount of time it has taken the Commission to act...nearly a year and a half to inform me of my original "default" and then an *additional* two years and 4+ months to act on my waiver request!

To hopefully put this in perspective, to be a licensee, the FCC requires all broadcasters to "serve the public interest" but in the case of the citizens of Baggs, Wyoming and the surrounding area, the Commission's actions have impeded the public's interest, in that Baggs *still does not* have any local radio service. Had the FCC granted my original request, I would have been required to build and operate radio service to Baggs by the summer of 2009. As it stands now, if the FCC does *not* grant my waiver appeal, the channel for Baggs will have to be re-scheduled for a future auction after which the winning bidder will be given up to thirty six months to build the station. That means residents of Baggs could be waiting for local radio service until 2016 or later! That's ten years from the original auction date!

Recently a new development has come to light. The FCC has granted three licenses (permits to build) to auction winners who have filed their technical 301 applications beyond the date required by the auction rules. The most recent case was granted on June 27, 2012 to Joseph Tesiero for a new FM at Speculator, New York after Mr. Tesiero filed his 301 application *26 days after the deadline!* His stated reason for doing so was, "he did not have the assistance of counsel" and "he had been preoccupied with the construction of another station and issues related to his non-broadcast business." A copy of the FCC's order is also enclosed with this letter.

Although not specifically the same as making an auction down payment late, the implication is the same...filing a late 301 application is subject to being in "default" of the auction rules however, the FCC stated in their favorable decision of his waiver request, "The Commission has previously determined that an applicant has established *good cause* for a late-filed post-auction long-form application submission when minor, inadvertent, post-auction delinquencies did not disrupt the auction process, nor undermine the *Commission's policy of facilitating rapid implementation of service to the public.*"

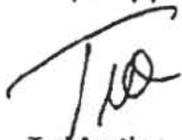
I believe my being ONE DAY late due to circumstances which my bank took responsibility for is far more "minor and inadvertent" than that of Mr. Tesiero. My circumstances also did not "disrupt the auction process" any more than Tesiero. But most importantly, the public's interest in Baggs would best be served by overturning the FCC's denial of my waiver request and authorizing the "rapid implementation of service" to Baggs.

If you agree that my waiver has merit, then I request that you write to the Chairman of the FCC and make the public's interest in Baggs of utmost importance. Here is his address:

Chairman Julius Genachowski
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

You can also email him at Julius.genachowski@fcc.gov. I greatly appreciate your time and consideration in this matter and welcome any questions you may have.

Very truly yours,



Ted Austin
P.O. Box 548
Rexburg, ID 83440
(208)709-2694
ted@q102fm.net

DECLARATION OF TED AUSTIN, JR.

I, Ted Austin, Jr., am giving this statement in connection with my efforts to establish a new FM radio broadcast station to serve Baggs, Wyoming (population 348) on 103.5 MHz. My objective in pursuing this project is to bring a new radio service to an extremely isolated part of the Intermountain West that presently has no station to call its own, and very limited reception service.

I am a genuine small market broadcaster. I own and operate just one FM station, in Driggs, Idaho, a town of 1100 people. Accordingly, the money and time spent on my application for 103.5 MHz is substantial for me. If my application is dismissed, hundreds of hours of time, and thousands of dollars that I have spent on this project in legal & engineering fees, will be lost, and service on 103.5 MHz in the Baggs area will be delayed indefinitely.

The FCC completed Auction 62 on January 31, 2005. I participated in that auction by bidding for the vacant channel in Baggs. Many rounds of the bidding proceeded without any higher bids for this channel. Ultimately my bid, at \$21,000, was deemed to be the high bid.

On or about February 8, 2007, the FCC issued a public notice that listed me as the winning bidder for the Baggs license, under bid number MIM-FM477-A. It also specified that the amount of \$2,700, over and above my upfront payment of \$1500, would have to be submitted to the FCC by February 23, or the tenth business day following the notice date.

On the evening of February 22, 2007, my son was injured in an accident and was in excruciating pain. He was transported over 40 miles to Idaho Falls to receive treatment. Naturally my wife and I felt that our top priority was to stay with him in this crisis. Indeed, my son's condition required my direct involvement with the attending medical professionals during most of the following day since, as a minor, he was not in a position to consent to the necessary treatment on his own. Moreover, under the circumstances, I did not feel that it would be right to leave him with the feeling that he was less important than my business. Thus, on February 23, 2007, I was not able to pay a personal visit to my bank in St. Anthony, Idaho in order to arrange for the wire to the FCC.

Nevertheless, I did telephone the bank from Idaho Falls, and gave the bank employee instructions to wire transfer the required funds to the FCC's account at the Mellon Bank in Pittsburgh, along with the detailed information needed to accomplish the wire in time. I had ample funds in the account to complete the transfer.

The bank employee told me nothing about any further steps that would be necessary on my part in order to complete the wire, so I believed that the transfer would be completed as directed. I was not informed, until far too late to complete the wire that day, that the bank had procedures requiring my signature and a photo identification prior to the actual wiring of the funds.

On the morning of February 24, I was advised of the necessary procedures. As my son's situation had stabilized by then, I went to the bank and initiated the transfer of funds before the deadline of 2 pm local time. That same day, I submitted my long form application for the Beggs permit, which my engineer had completed the day before. This

was well in advance of the stated deadline of March 10, 2007. In due course, I paid the filing fee of \$2,930 in connection with the Form 301 application.

My application was accepted for filing on April 19, 2006. This action was announced on an FCC Public Notice dated April 24, 2006. No petitions to deny were filed against the application.

There are no suitable developed electronic communications sites in the vicinity of Baggs, so was constrained to propose erection of a tall tower for the new station. Unfortunately, I have run into difficulty securing the approval of the Federal Aviation Administration for the erection of the tower proposed in my application. For that reason, I have spent a great deal of money on studies by consulting engineers seeking ways to designate an alternate transmission site so as to maintain service to the public in this underserved and sparsely populated region on the Wyoming-Colorado border.

After consideration of numerous options, and thanks to assistance rendered by several consulting engineers, this summer I located a tower site over the Colorado line, and settled on a technical plan that I believe will optimize the potential for this channel to offer a mass communications service in this rugged Western Slope area. One of the engineers who helped me with this problem finished his work recently. Since then, I have been working with legal counsel to finalize the amendment to the pending application to specify the new site. The amendment also details the public interest benefits of the proposed re-engineering of my plans for the new radio station.

On September 13, 2007, I received a courtesy call from a member of the Commission's staff indicating that my application was in danger of dismissal due to the perceived late receipt of my down payment. It had been so long since the payments had

been submitted that I had forgotten about the exact circumstances surrounding the payment. With some help from my wife, I soon remembered the family medical emergency that had coincided with the payment due date. The fact that the FCC had subsequently accepted my payments and had accepted the application for filing, without objection, indicated to me that the FCC was not injured by the slight delay in payment, and that my rights to the Baggs license were valid.

With that background, I was shocked at the news that everything I have sunk in to the Baggs radio project could be lost, over 18 months after the fact. I contacted my local bank to secure confirmation of their error in not processing my request as originally submitted, or in failing to tell me in time what was required in order to comply with my request for the wife. As the result of their investigation, they have explained that the delay in transfer of funds was in fact the result of the bank employee's failure to apprise me as to what was needed. The bank has taken responsibility for the late transfer, as appropriate since the delay was produced by events out of my control.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and recollection. Dated September 27, 2007.

Ted Austin, Jr.



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

April 7, 2015

The Honorable Michael D. Crapo
United States Senate
239 Dirksen Senate Building
Washington, D.C. 20510

Dear Senator Crapo:

Thank you for your inquiry concerning the status of the pending Application for Review filed by one of your constituents, Mr. Ted Austin. Unfortunately, your letter was not received by the Commission's Office of Legislative Affairs until March 10, 2015. I apologize for the resulting delay in responding.

I recently circulated a draft Order to my fellow Commissioners that would resolve Mr. Austin's Application for Review, consistent with our auction rules and procedures. The decision will be final after the Commissioners review and vote on that Order. I am hopeful that the Commission will resolve Mr. Austin's Application for Review in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Wheeler", written over a horizontal line.

Tom Wheeler