

BEFORE THE  
**Federal Communications Commission**  
 WASHINGTON, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of Section 309(j) of the Communications Act — Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses	)	MM Docket No. 97-234
	)	
Reexamination of the Policy Statement on Comparative Broadcast Hearings	)	GC Docket No. 92-52
	)	
Proposals to Reform the Commission's Comparative Hearings Process to Expedite the Resolution of Cases	)	GEN Docket No. 90-264
	)	
To: The Commission	)	

**PETITION FOR PARTIAL RECONSIDERATION**

DanBeth Communications, Inc. (“DanBeth”) hereby petitions the Commission to reconsider its new rules governing the qualification of applicants for the “new entrant” bidding credit in broadcast auctions.

DanBeth fully supports the concept of a “new entrant” bidding credit.<sup>1/</sup> DanBeth is concerned, however, that the rules implementing the credit are ambiguously and loosely drafted and therefore may lead to abuses that could jeopardize the viability of bidding credits for designated entities. Therefore, the purpose of this Petition is to point out potential flaws in the rules as currently drafted.

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<sup>1/</sup> DanBeth filed comments supporting bidding credits for small businesses, as well for applicants with no other media interests. See *First Report and Order*, FCC 98-194 at ¶¶ 188 n.223 & 189 n. 226 (released August 18, 1998).

In adopting the new entrant bidding credit, the Commission devoted barely a paragraph to a discussion of the rules themselves. *Id.* at ¶ 190. The Commission merely states that it will use as a model the existing lottery rules for LPTV, television translator and MDS licenses. *Id.* The Commission thus appears to have disregarded the extensive set of rules and body of case law that it has developed in determining eligibility for various bidding credits in wireless services. *See, e.g.,* 47 C.F.R. § 1.2110.

Two examples illustrate how easily the qualification standards for the new entrant bidding credit can be manipulated.

First, the term “owners” is loosely and ambiguously defined. An “owner” is defined to include limited partners, but not nonvoting stockholders, officers, directors, creditors, option holders or time brokers. 47 C.F.R. § 73.5008(c). The Commission gives no explanation for including in the definition certain forms of ownership, but not others. Nor does the Commission explain why it departed from its attribution rules in some respects, but not others.

As written, the new entrant bidding credit rules would permit a corporate applicant to qualify even if 99% of the equity (in the form of non-voting stock) was owned by the licensee of 30 television stations. Indeed, the non-voting stockholder could lend the applicant all of the funds necessary to buy the license and build the station, hold an option to buy the station and have an agreement to program 100% of the time on the station under a time brokerage agreement — all without running afoul of the new entrant bidding credit.<sup>2/</sup>

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<sup>2/</sup> The “unjust enrichment” rules provide such a company with an added financial incentive. Under the Section 73.5007(a)(2), there is no prohibition on the sale of a license purchased using the new entrant bidding credit. Instead, the rule merely requires the licensee to remit a declining portion of the credit if the license is sold during the first five years after grant, plus interest on the remitted portion at the 10-year Treasury note rate. Thus, by  
(continued...)

Second, the term “same area” is defined so as to give an advantage to an applicant which owns a more powerful station as against an applicant which owns a smaller station. Under new Section 73.5007(a)(1), two stations are in the “same area” only if the facilities of one of the stations “wholly encompasses” the facilities of the other. Take, for example, the owner of a small Class A FM station. If the owner applies to bid for a license for a new television station with the same community of license, it is very likely that the contours of the new TV station would wholly encompass the contours of the small Class A FM station. In contrast, the owner of a powerful Class C FM station could configure the TV and FM facilities so that the contours of one did not wholly encompass the contours of another.<sup>3/</sup>

These examples amply demonstrate the potential for abuse that exists under the new-entrant bidding credit rules as currently drafted. The rules practically invite manipulation. In order to maintain the integrity the designated entity program, the Commission should modify the

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<sup>2/</sup>(...continued)

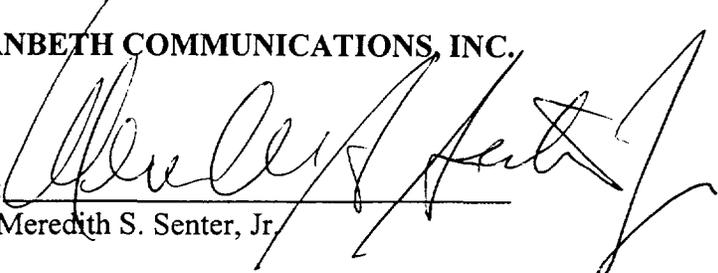
waiting one or two years to exercise the option, the option holder may obtain some of the benefit of the bidding credit, plus financing on the portion to be remitted at a below-market rate.

<sup>3/</sup> This is particularly true because the rules do not explain how the contours of the proposed station will be determined. An applicant for a new station is not required to submit a technical showing until after completion of the auction.

standards for qualifying for the new entrant bidding credit so as to limit its applicability solely to applicants that have no or relatively few other media interests.

Respectfully submitted,

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