

MULLANEY ENGINEERING, INC.

9049 SHADY GROVE COURT
GAITHERSBURG, MD 20877

**Before the
Federal Communications Commission
Washington, DC 20554**



In the Matter of:)
)
Auction of FM Broadcast Construction) DA 06-997
Permits Scheduled for January 10, 2007)
FM Auction No. 68) AU Docket 06-101

To the Commission:

COMMENTS

Mullaney Engineering, Inc. (“MEI”), hereby submits its comments in response to the Public Notice released by the Commission on August 24, 2006, in DA 06-997 (“PN”), which solicits comments concerning the reserve prices or minimum opening bids and other auction procedures for Auction 68. MEI is submitting these comments so as to establish a formal written record which can be reviewed by Congress.

Minimum Opening Bid

This auction offers 9 allotments which were offered in one or both of the two previous auctions (37 and/or 62). Given that these channels are being “recycled” it would appear that any substantial minimum opening bid is inappropriate. It is probable that the reason these permits remain unsold is that the public found the minimum opening bids to be much too high. Each of these 9 channels were offered in auctions in which multiple bidders indicated an intent to file bids on all of the channels being offered. A review of those auctions indicates that this pledge was nothing more than a bidding strategy and that the bidders had no intention of placing bids each of the allotments being offered. Had those bidders been serious then 7 out of the 9 channels being offered in this auction would have either been sold for the minimum bid or they would be in “default” having received a proper bid which was not fulfilled. That bidding strategy (indicating interest in all

allotments being offered) **made it unwise** for a properly informed bidder (a bidder which completed its due diligence) to even place an initial bid on an allotment which it felt was **already over priced for the market**. That bidding strategy also eliminated any hope of the allotment going as a singleton (for free).

We suggest that the minimum opening bid for each of the allotments be reduced to 10% of that suggested by the staff or a minimum of \$500 which ever is greater. Many people might think that this is much too low of a dollar amount for an FM allotment to be offered. However, this public notice indicates that 7 out of 9 of these channels **never received a single bid in up to two separate auctions**. If there is an interest by multiple **“active”** bidders then the bid price of the allotments will naturally rise to its true **“real world”** value.

In order to avoid a prolonged auction we suggest that the bidding increment be modified to permit the bid to be increased by not just the traditional 1.1, 1.2, ..., 1.9 but also by 2.0, 3.0, 4.0 and 5.0 when the initial or previous bid is less than \$25,000. This will permit a truly interested bidder to eliminate more quickly the insincere or poorly financed bidders.

Simultaneous Multiple-Round Auction Design

Keeping the bidding open on all construction permits until bidding stops on every construction permit unduly increases the administrative costs for the new entrant bidder the Commission is hoping to encourage into the industry. If one assumes that the new entrant is seeking just one or two of the allotments, they are forced to continue monitoring each round of the bidding despite the fact that their allotment may not have had any activity for ten or more rounds. **MEI proposes that any allotment which has no subsequent additional activity during the next ten rounds is automatically closed.**

How Many Times Will An Allotment Be Offered

The Commission needs to adopt a procedure on how to handle vacant allotments which are offered at auction and during which no bids are received or the channel is returned under “default”. MEI suggests that in the next scheduled auction the minimum bid of that allotment should be reduced to 10% or a minimum of \$500 which ever is greater. If the allotment remains unsold in the second auction then the allotment should automatically be proposed for deletion within the subsequent 90 days following close of the auction. If interest still exists let a sincere bidder file its support for the allotment which received no bids. Such unwanted allotments **should not continue to be repeatedly offered** in subsequent auctions (4 of the allotments proposed herein have gone unsold in two auctions). Many of the vacant allotments that exist today were created by insincere proposals. Hopefully, if the Commission adopts changes which are currently pending the creation of unwanted allotments should be minimized. Unwanted allotments clog the band preventing the creation of desirable allotments or upgrades to existing facilities. Unwanted allotments should be deleted.

Final Payment & Long Form Filing Schedule

In previous auctions the final payment of money owed by the winning bidders was not due until the Audio Division was prepared to grant the construction permit application. It appears that per Docket 05-211, FCC 06-4, the final payment **is now due within 20 days of the close of the auction public notice.**

Presently a winning bidder is required to file its long form application within 30 days of the public notice announcing the close of the auction. It is presumed that this deadline was established to expedite the time at which the Government would receive its final payment (\$\$\$). However, now that final payment is no longer tied to the grant of the FM construction permit the need for such an unrealistic 301 filing deadline no longer exists. Given that a winning bidder has to prepare and submit an 301 application which is deemed

acceptable to not only the FCC but also the FAA and the National Historic Preservation Act (NHPA) a 30 days dead line is unrealistic and results in many unnecessary amendments. Many auction 301 applications were simply filed to meet the 30 day dead line and avoid the wrath of the FCC. Currently, channel changes of existing facilities which are authorized by rule making are given 90 days to file their long form 301 application. Based upon this past policy it would appear appropriate that **auction applications be given 90 days to file their 301 applications.**

The bidder/applicant has no control over the processing time or outcome on these other approvals. The FAA is proposing to formally prohibit the construction of facilities involving certain FM frequencies which fail to pass a computer program which is totally unrealistic in its calculations. The FAA had the option of commenting on the proposed FM frequency **prior to adoption by the FCC** but has elected to wait until construction time to make its views known. It is probable that some frequencies may never be built because of the new FAA procedures. The extended filing deadline will permit the applicant to properly consider all of these items prior to filing its application. This should eliminate the need to file some amendments thus reducing some of the additional processing burden placed on the staff.

The change in the final payment escaped the scrutiny of most broadcasters. To require such early final payment (20 days after close of the auction) increases the cost of doing business, especially for the new entrant which the FCC says it is trying to encourage into the market place. In the first two auctions the Audio Division has expended considerable resources to process the applications at lightning speed. **Hopefully, the Audio Division will continue to expend such resources and grant auction applications as quickly as possible now that the Government has been "paid-in-full".**

Closing

MEI hopes the Commission will review all of the comments submitted herein with an **open mind**.

Respectfully submitted,

MULLANEY ENGINEERING, INC.

5 September 2006

By:



John J. Mullaney
Mullaney Engineering, Inc.
9049 Shady Grove Court
Gaithersburg, MD 20877
[301] 921-0115
Mullaney@MullEngr.com

