

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In re:)
)
FM Auction No. 70) AU Docket No. 06-170
Auction of FM Broadcast)
Construction Permits)
Scheduled for March 7, 2007)

To: Office of the Secretary
Attn: WTB/ASAD

Comments of CODO Group, LLC

CODO Group, LLC ("CODO"), by its attorneys, and in response to the Commission's *Public Notice, Auction of FM Broadcast Construction Permits Scheduled for March 7, 2007; Comment Sought on Competitive Bidding Procedures for Auction No. 70*, AU Docket No. 06-170, DA 06-1810, released September 21, 2006 (the "Public Notice"), hereby respectfully submits its Comments. As demonstrated below, the Commission must raise the current bidding credits for new entrants by at least 10%, in order to provide new entrants with a *real chance* of outbidding established broadcasters for construction permits, and adding new voices to radio markets throughout the nation.¹

Although not expressly solicited for comment in the Public Notice, CODO strongly urges the Commission to continue awarding new entry bidding credits for eligible entities, and consider

¹ Generally speaking, under Section 73.5007 of the Commission's rules, a winning bidder that that has no attributable interest in any other media of mass communications qualifies as a "new entrant" and receives a 35% bidding credit; and if the winning bidder has an attributable interest in no more than three media of mass communications, and none of those mass media facilities serve the same area as the proposed broadcast station, the winning bidder qualifies as a new entrant eligible for a 25% bidding credit.

the adoption of provisions that would expand the bidding credits that are available to bidders like CODO, who are trying to acquire broadcast construction permits for the first time.

CODO was an active and hopeful participant for numerous construction permits in FM Auction No. 37 and FM Auction No. 62. CODO was eligible for the maximum 35% new entrant bidding credit in both auctions, as it will be in FM Auction No. 70. However, the 35% bidding credit simply did not provide CODO with enough of an advantage to fairly compete against established broadcasters, who often already have in place the necessary infrastructure to support a new broadcast facility – a huge cost new entrants must consider when bidding for construction permits. Unfortunately, CODO was outbid for every channel on which it bid in Auction 37 and Auction 62 – the same experience most other new entrant bidders had – while the broadcast group owners managed to win scores of construction permits.

CODO used its extensive business experience and invested considerable energy and resources to carefully evaluate the channels available in Auctions 37 and 62. To the best of its ability, CODO determined reasonable bidding strategies for the markets in which it was interested, only to see winning bids far surpass what it believes were commercially reasonable amounts for a new entrant to pay when starting a broadcast business from scratch.

While CODO recognizes one purpose of the auction process is to generate public revenue for the assignment of valuable spectrum, Congress, in Section 309(j) of the Communications Act, also recognized an auction process should help introduce new broadcast voices into the marketplace. Indeed, the value of the objective mandated by Section 309(j) of the Act is even more important today given the frustration expressed by numerous members of Congress over the increased media concentration arising under the Commission's multiple ownership rules. The

Commission should focus its rules for Auction No. 70, and future broadcast auctions, to strengthen the new entrant bidding credits to lessen to some degree local radio concentration. The existing rule is simply insufficient to introduce a reasonable number of newcomers using the Commission's current auction procedures.

Under the circumstances, the Commission must evaluate the results of Auction 37 and Auction 62 to confirm CODO's experience and raise the new entrant bidding credits above the 35% and 25% levels by at least 10%, so that new entrants have a better chance of actually becoming winning bidders and new radio station owners.

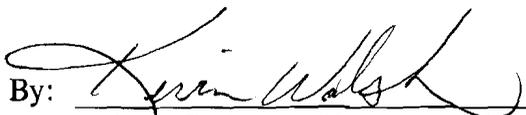
In addition, the Commission should evaluate all the auction rules to determine what other adjustments are appropriate to accomplish one of the purposes of Section 309(j) of the Communications Act, the expansion of new media owners. For example, the Commission should consider the reservation of certain channels in highly concentrated markets for bidding only by parties eligible for new entrant bidding credits, or create a sliding scale that requires higher bids depending on the number of media already owned by a particular bidder.

The efficiencies and synergies that can be realized by established broadcasters bidding for new construction permits allow them to outbid new entrants in virtually any market, even though qualified new entrants get a 25% or 35% bidding credit. CODO submits that the current bidding rules do not work as intended, and it is incumbent on the Commission to consider alternative

measures to address the problem, including an increase of the new entrant bidding credits to 35% and 45%, respectfully.

Respectfully submitted,

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