

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Competitive Bidding Procedures)	AU Docket No. 09-21
FM Auction 79 – September 2009)	DA 09-422
)	
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To: The Commission

REPLY TO COMMENTS

Briarwood Media (“Briarwood”), of Idaho Falls, Idaho, hereby submits this Reply To Comments regarding the *Competitive Bidding Procedures for Auction 79*, DA 09-422 (rel. February 27, 2009)

Briarwood wishes to address several issues that have come forward regarding the proposed Auction 79 in support whereof, Briarwood states as follows:

I. PRELIMINARY MATTERS,

Briarwood hopes to participate in Auction 79. Briarwood has not previously or currently owned any FCC licensed facilities.

II SUPPORT OF COMMENTS,

Briarwood supports Mullaney Engineering’s proposal to “*increase discounts to new entrants and broadcasters that own less than three facilities. The FCC should increase the discounts provided to new entrants from 35% to 60% and for an existing owner with less than three broadcast facilities from 25% to 40%*”. This proposal will increase participation from new and minority owners.

Briarwood supports Mullaney Engineering’s proposal to “*modify the auction rules to state that once a bid is placed on an allotment and no subsequent bids are placed during the next 6 subsequent rounds then the auction of that specific allotment is closed*”, However, Briarwood suggests going even further and suggests that if no subsequent bids are placed during the next 3 subsequent rounds then the auction of that specific allotment is closed. This would require interested bidders on each allocation to stay in the Auction. It will also move the Auction along quicker and not require constant monitoring by bidders.

Briarwood supports the suggestion made by L. Topaz Enterprises, Inc. that channels 274C3 and 284C3 at Elko, Nevada be added to Auction 79 and requests that the commission go even further and include all new allocations that were approved under the Commission’s *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services* (MB Docket No. 05-210). After January 19th, 2007 anyone wishing to create a new allotment was required to file a Form 301 with the commission and pay the appropriate fee to have the new allotment opened. Those

proposed broadcasters deserve to have the allocation brought to Auction in a reasonable period of time. Briarwood proposes that the Commission set a policy of making all new allocations approved under the new rules be available in the first Auction following the approval of the allocation. Presently the Commission is requiring Broadcasters to pay a fee of several thousand dollars to open an allocation and then making them wait for years to be able to bid on it. This is all with no guarantee that they will prevail at the Auction. This policy has slowed the applications for new allocations.

Briarwood also suggests that the Commission make a discount available to new entrants that wish to file for a new allocation much in the same way they do for the Auction. We propose that anyone that has not owned an FCC licensed station within 5 years of the date of filing or previously filed for a new allocation be considered eligible for a new entrant discount on the Form 301 fees required to open a new allocation. This would attract both new and minority ownership through new allocations.

III DISAGREE WITH COMMENTS,

Briarwood disagrees with Mullaney Engineering's proposal that *'the discount should only apply to the first four facilities obtained in the auction (not to all facilities obtained). At the same time the FCC should restrict the sale of all discounted facilities for 8 years after grant of the initial CP'*.

First if a new entrant has the financial means to purchase more than four facilities they should be allowed to do so. Such a restriction would cause new companies to stay out of broadcasting. It would also cause a problem for the commission if a new entrant bought more than four CPs. How would the Commission determine which four CPs received the discount and which did not? Briarwood also disagrees *"with restricting the sale of all discounted facilities for 8 years after grant of the initial CP"*. This would cause an undue hardship for any new entrant. It is hard enough to project the future for three to five years, let alone committing to 8 years of ownership. How many current stations are under the same ownership they were 8 years ago?

Briarwood proposes that rather than restrict the number of facilities or increase the number of years that a facility be owned, that the Commission restrict those that can be considered as new entrants. Briarwood agrees with Mullaney that *"the commission should modify the definition of a new entrant"* however Briarwood disagrees with Mullaney's suggestion of 24 months and suggests the Commission restrict anyone that has owned an FCC licensed station within 5 years of the date of the Auction be considered ineligible for a new entrant discount and if an existing owner with less than three broadcast facilities had owned more than three facilities within 5 years that they would be considered ineligible for a small owner discount.

Briarwood believes the Commission should not *"modify the auction rules to require that any bidder indicating an intention to bid on more than 10 percent of the all the allotments in a specific broadcast auction place on deposit the minimum opening bid (MOB) for all such facilities"*. This would create an undue hardship for new companies wishing to bid as they would need an even larger amount of capitol to enter the Auction.

Briarwood strongly disagrees with Mullaney's suggestion *"to hold an auction during this severe of an economic downturn will result in a "fire sale" of a very precious asset that, unlike other spectrum, has a more laudable goal of furthering the public interest"*. Briarwood, and most likely others, are prepared to go forward at this time. By delaying the Auction, the Commission risks losing parties that are ready to proceed now with no guarantee that the allocations will be worth anymore in the future.

Briarwood also disagrees with the comments by the Minority Media and Telecommunications Council (“MMTC”) that the Auction be postponed until the economic recovery takes hold. While we do not agree with the “MMTC” and Mullaney that a “fire sale” will take place, any soft market should favor minority and small broadcasters that wish to become owners. Waiting until the marketplace improves will only shut out smaller companies.

IV. ADDITIONAL COMMENTS,

Briarwood asks that the Commission proceed with the planned Auction and that it considers our comments in moving forward.

Sincerely,

Michael R. Schutta
President
Briarwood Media