

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re)	
)	
Auction of FM Broadcast Construction)	DA 10-1711
Permits Scheduled for March 29, 2011)	AU Docket No. 10-183
Comment Sought on Competitive Bidding)	
Procedures for Auction 91)	

To: The Secretary
Attn: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division

REPLY COMMENTS

Spanish Peaks Broadcasting, Inc. (“SPB”) files these Reply Comments in response to the Commission’s Public Notice, dated September 21, 2010, *Auction of FOM Broadcast Construction Permits Scheduled for March 29, 2011, Comment Sought on Competitive Bidding Procedures for Auction 91*, DA 10-1711 (the “Public Notice”). In the Public Notice, the Commission solicited comments concerning procedures for the upcoming auction of FM construction permits. In its Comments to the Public Notice dated October 13, 2010, Wild West Broadcasting., Inc., (“Wild West”), in reference to Construction Permit MM-FM837 for Channel 284A at Blanket, TX, claims that “the minimum opening bid of \$15,000 is too high for a class A facility in a town of 388 people. The hills and valley in this area will limit a class A’s signal, and will certainly cause the station at that power to have diminished value,” and, further, Wild West

“propose[s] a minimum opening bid and reserve price of \$3,000.” SPB supports Wild West’s Comments and, for several reasons – some similar to Wild West’s - respectfully requests that the Commission reduce the Bidding Units, Upfront Payment, and Minimum Opening Bid (collectively, the “Minimum Bid”) for Construction Permit MM-808-C3 for Channel 251C3 at Charlo, Montana (the “Charlo Permit”) to \$2,500. On a wider scale, SPB requests that the Commission consider amending its auction procedures in a manner that SPB believes would better insure that all allotments like Blanket, TX, and Charlo, MT, be sold at Auction 91 and not remain unsold until the next auction.

Charlo Permit

On April 11, 2007, SPB expressed an interest in Channel 251C3 at Charlo, Montana and, in accordance with the new policies adopted in MB Docket 05-210, RM-10960 (the “New Allotment Procedures”), applied for a “New Station with Petition for Rulemaking or Counterproposal to Amend FM Table of Allotments” using FCC Form 301 and paid a filing fee of \$3,210.00 (the “Filing Fee”) upon submission thereof. SPB remains interested in acquiring, constructing, and operating the Charlo Permit. However, SPB believes that the Minimum Bid of \$10,000 is too high.

It remains unclear to SPB and, most likely, the general public as to how, exactly, the Commission determines the “Minimum Bid” for each allotment in its auctions. However, it is SPB’s guess that the Commission uses a mathematical formula to base the Minimum Bid on the number of people potentially encompassed by the Protected Contour of a maximum class facility (the “Population Covered”) multiplied by some monetary value per person (the “Per Pop Value”). Unfortunately, it appears that the

manner in which the Population Covered and Per Pop Value are determined appear to be either flawed or inconsistent.

It appears that the Commission continues to use either similar or even higher Per Pop Values in Auctions 79 and 91 as it did in 2004's Auctions 37 or 2005's Auction 62, when the economy was much better. For instance, in Auction 37 Channel 288C2 at Alberton, MT, was assigned a Minimum Bid of \$15,000 but in Auction 91, and after even being downgraded to Channel 288C3, Alberton now requires a Minimum Bid of \$35,000. It appears that the Per Pop Value being used by the Commission increased by 233% from 2004 to 2010 based on this change. Similarly, in Auction 62, the Minimum Bid for Channel 254C2 at Ennis was set at \$10,000. In 2009's Auction 79, the same permit required a 400% higher Minimum Bid of \$40,000 for which no bids were placed. Even though the Minimum Bid for Channel 254C2 at Ennis in Auction 91 has been reduced to \$3,500, there just doesn't seem to be a rhyme or reason as to what the Per Pop Value will be from Auction to Auction or permit to permit.

Determining Population Covered is also difficult to determine in different areas of the country. In Iowa, for example, a Class C3 with maximum class facilities (25 kW at 100 meters HAAT) would require a tower less than 350 feet high to reach the Population Covered used by the FCC in determining the permit's value. However, in the case of the Charlo Permit, in order to achieve maximum Class C3 facilities with a Height Above Average Terrain of 100 meters and an ERP of 25 kW, SPB or any other party interested in the Charlo Permit would, most likely, need to construct a tower not 350 feet tall, but one nearly 700 feet tall due to the extremely rugged terrain in Western Montana to reach the FCC predicted Population Covered with an HAAT of 100 meters. In the continuing

challenging economy, constructing such a facility makes little if any financial sense and a high bidder for the permit will most likely, be forced to construct a far more technically humble facility. As such, SPB requests that the Minimum Bid for the Charlo Permit be reduced to \$2,500.

Proposed Auction Procedure Adjustment

Until the Great Recession began in 2008, the Minimum Bids being required by the Commission were low compared to amounts auction winners were paying. In other words, the market “bid” far exceeded the FCC’s “ask.” Auction 79 showed that this financial relationship no longer holds true. Now, the “bid” and the “ask” are either very close together or, in many cases, the “ask” even exceeds the “bid” as Minimum Bids have become insurmountable obstructions for parties to overcome in order to participate in the auctions. In Auction 79, it appears that the following construction permits were not bid upon:

MM-FM185-A	Whitehall, MT	MM-FM682-C2	Erick, OK
MM-FM396-C3	Cheboygan, MI	MM-FM684-A	Haworth, OK
MM-FM411-C2	Ennis, MT	MM-FM687-A	Leedey, OK
MM-FM628-A	Cove, AR	MM-FM689-A	Muldrow, OK
MM-FM629-C3	Daisy, AR	MM-FM690-A	Rattan, OK
M-FM643-A	Trona, CA	MM-FM691-C2	Reydon, OK
MM-FM651-C3	Alamo, GA	MM-FM693-A	Taloga, OK
MM-FM656-A	Grayville, IL	MM-FM694-A	Thomas, OK
MM-FM657-A	Clayton, IL	MM-FM695-C3	Valiant, OK
MM-FM662-C3	St. Joseph, LA	MM-FM698-A	Wright City, OK
MM-FM663-C3	Wisner, LA	MM-FM703-A	Big Lake, TX
MM-FM664-A	Harrison, MI	MM-FM707-A	Dickens, TX
MM-FM666-C2	Onaway, MI	MM-FM708-A	Elkhart, TX
MM-FM667-A	Pentwater, MI	MM-FM720-C2	Menard, TX
MM-FM668-A	Alton, MO	MM-FM728-C3	Snyder, TX
MM-FM670-A	Vaiden, MS	MM-FM731-C3	Weinert, TX
MM-FM680-C2	Buffalo, OK	MM-FM738-A	Albany, VT

MM-FM740-C3
MM-FM741-C3

Boscobel, WI
Owen, WI

MM-FM742-A

Tigerton, WI

All of the above permits are once again offered in Auction 91 with Minimum Bids that have been reduced from Auction 79 levels. However, it is SPB's prediction that several these permits as well as other included in Auction 91 will receive no bids due to the fact that either the Minimum Bids are either too high or bidder due diligence has revealed that certain permits are technically not viable to engineer.

Obviously, the Commission's mandate to ensure a fair, efficient and equitable distribution of radio services not only predates but also outweighs any obligation it may have increase federal revenues through spectrum auctions. As such, it makes no sense for the Commission to "hold out" for high opening bids that are impractical thereby delaying the commencement of service to several unserved regions or communities auction after auction, year after year. What's more, there is a distinct possibility that the construction costs alone to enable the operation of some permits make certain permits not viable even if the Commission simply "gave away" the permits. As such, SPB believes that the Commission should consider reducing the Bidding Units, Upfront Payment, and Minimum Opening Bid for each permit in Auction 91 to 25% of each permit's Public Notice value for the first four auction rounds. If there is no interest or bid placed upon a given permit - even at these substantially reduced levels - as soon as the auction is complete, the Commission should issue a notice of rulemaking proposing the deletion of those allotments for which no bids were placed.

SPB believes that adopting this proposal will have several positive effects. First, it will encourage more parties to participate in the auction because it will set the financial

bar for each permit low enough for entities wishing to serve these mainly rural communities. Second, SPB believes its proposal will only extend the auction by one or two days due the fact that in round five, the “as published” Bidding Units in the Public Notice will become effective thereby increasing each bid level at a healthy pace so the auction does not drag on for an eternity for those permits that are highly sought after in more populated areas. Third, it will identify those permits for which there is truly not an “interest” either due to financial or technical implications. Fourth, it will implement a notice and comment process that will delete those allotments for which there is no interest so that other communities, where interest does exist, may either receive expanded or new service. Of course, during the notice and comment process to delete any given allotment, a party may always file an expression of interest in that allotment in the form on Form 301 and pay the associated Filing Fee if it has an interest in retaining the allotment for a future auction. Finally, adopting SPB’s proposal would reduce and, possibly eliminate, the need for entities such as SPB and Wild West to request reductions in permits on an individual basis.

Respectfully Submitted,

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

Kevin Terry, President
Spanish Peaks Broadcasting, Inc.
October, 27, 2010