

Bidding Credits Designed to Increase Media Ownership by New Entrants Have Not Achieved Their Purpose

Underrepresentation of women and minorities in broadcast ownership is a long-standing problem. The most recent available data shows that despite comprising 51% of the population, women own a mere 6% of full-power commercial radio stations and 5.9% of television stations.¹ Likewise, despite being 33% of the population, people of color own just 7.7% of full-power commercial radio stations and a meager 3.14% of these TV stations.² In granting the FCC the authority to award broadcast licenses through auctions, Congress mandated that “the Commission shall...establish a competitive bidding methodology... [that promotes] disseminating licenses... [to]... members of minority groups and women...”³

The FCC determined that one of the primary hurdles to ownership by women and people of color is the cost of entering the broadcast industry. To address these barriers to entry, in 1998 the FCC adopted a race and gender-neutral “new entrant bidding credit” for FCC spectrum auctions. The bidding credit subsidizes the cost of a winning bid for broadcast licenses by awarding a 35% price reduction for auction participants with no interests in any other “media or mass communications,” and 25% for those who have interests in three or fewer. At the time of adoption, the bidding credit was characterized a stop-gap measure to be used until the FCC could build the evidentiary record necessary to adopt more targeted measures to increase ownership by women and people of color.⁴

The New Entrant Bidding Credit Contains Loopholes that Can be Exploited by Large, Well-Financed Media Companies to Get Cash Discounts Worth Millions of Dollars

While the bidding credit was established to give a leg-up to new entrants, including women and minorities, a loophole in the way the credit has been implemented has allowed it to be exploited by entities that cannot be considered new entrants. An entity qualifies as a “new entrant,” if it owns fewer than three stations just two months before an auction takes place. In other words, some applicants can be eligible irrespective of their previous ownership holdings, no matter how large. Additionally, the discount applies to every license purchased in a single auction. That means deep-pocketed bidders can edge-out genuine new entrants while getting steep discounts for buying broadcast licenses in bulk. Meanwhile the U.S. Treasury is bilked out of millions of dollars while giving discounts to millionaires.

- Randy Michaels, former CEO of radio behemoth Clear Channel Radio, and current CEO of the Tribune Co., used the credit to purchase 21 licenses at a discount of nearly \$5 million.
- In 2004 Bigglesworth Media received a 35% reduction on the cost of 10 prime FM licenses, for a total cost reduction of nearly \$10 million. What was not obvious from Bigglesworth’s application was that its owners – who longtime members of the broadcast

¹ S. Derek Turner, *Off the Dial*, June 2007 available at http://www.freepress.net/files/off_the_dial.pdf;

S. Derek Turner, *Out of the Picture*, October 2007 available at http://www.freepress.net/files/out_of_the_picture.pdf

³ 47 U.S.C. § 309(j)(3)(b) (West, 2010).

⁴ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd. 15920, 15987 (1998).

industry – only qualified for the credit because they had just sold 39 broadcast stations for \$256 million shortly before the auction

- There may be many more instances of bidding credit abuse – the FCC has not tracked whether the bidding credits were awarded to *bona fide* new entrants. Nor has it investigated whether the credit has been effective in increasing ownership by women and minorities as it was intended to do.

The FCC Must Close the Bidding Credit Loopholes and Analyze Whether the Credit has Been Effective in Increasing Media Ownership Diversity and Competition

To date, the Commission has conducted 90 auctions. The Media Bureau recently accepted comments on the procedures for Auction 91, an auction to be held in March 2011 for 147 FM broadcast construction permits. Commenters in previous auctions suggested changes to improve the chances of *bona fide* new entrants obtaining a license, but the Media Bureau refused to address their complaints. Rather, the Bureau claimed that only the Commission could alter bidding credit procedures. This is untrue.

In addition to Auction 91, 200 further FM permits are expected to be auctioned off in the upcoming years. Additionally, there remains a distinct possibility that more broadcasting licenses will become available in the future. These auctions could present opportunities for entrepreneurs from underrepresented groups, such as women and minorities, to become broadcast owners – but not if the bidding credit is allowed to be exploited by well-financed incumbents.

Close the Loopholes:

- The Commission should change the ownership requirements as of the date of the short form filing deadline. This will help guard against corporations that own multiple media outlets from selling-off those stations immediately before an auction and then using the proceeds of the sale to re-enter the market as a heavily capitalized, *sham* “new” entrant. This adjustment would not require the adoption of a formal rule making procedure, but could be done *sua sponte* by the Media Bureau.
- The Commission should only apply the bidding credit to license purchases that fall within the requirements of the credits. That is, the credit should only apply to the initial three license purchases.

Measure Its Efficacy:

- The Commission should conduct a thorough analysis of previous auction winners to determine if the bidding credit is truly serving to increase minority and female ownership, as well as by legitimate new entrants.
- If the studies confirm that the bidding credit is ineffective the Commission should take the necessary steps to alter the credit so that it lowers barriers to entry for *bona fide* new entrants