

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 05-1076
Permits Scheduled for November 1, 2005)
FM Auction No. 62)



To the Commission:

REPLY COMMENTS

Mullaney Engineering, Inc. (“MEI”), hereby submits its reply comments in response to the Public Notice released by the Commission on April 14, 2005, in DA 05-1076 (“PN”), which solicits comments concerning the reserve prices or minimum opening bids and other auction procedures for Auction 62. During the previous FM Auction (#37) MEI acted as a the bidding agent, and therefore has direct experience in the procedures which are now being proposed. Based upon past experience, MEI does not expect favorable action on any of its suggestions, but has still decided to submit them nevertheless so as to establish a formal written record.

Additional Suggestions

Several of the other parties which filed comments had some interesting ideas & suggestions. MEI urges the FCC to consider the following:

If any allotment **goes ten rounds without an initial bid** then the minimum opening bid should **automatically be reduced to 50%** of the original bid. If the same allotment **goes another five rounds** without any initial bid the minimum opening

bid is **automatically reduced to \$500**. If the allotment **never receives** an opening bid the allotment is **automatically deleted** from the table of allotments upon conclusion of the auction. If the allotment receives **only one bid** during the auction the amount due by that winning bidder will be **automatically reduced to \$500**. This would essentially be equivalent to an allotment for which only one person filed a form 175. As was evident from Auction 37, many entities filed form 175 indicating allotments that they ultimately **never placed a bid on**. To require the one sincere bidder to pay of the minimum opening bid would be unfair given that the auction rules encourage bidders to name as many allotments as possible so as to disguise their real intentions.

If the final high bidder **withdraws** a standing high bid or is found to be in **default** after the auction, the FCC shall notify the **second high bidder** that it has the **option of acquiring** this allotment for its last standing high bid (notwithstanding its available bidding credits). The standing high bid will be determined **by first eliminating all** of the bids associated with the bidder which withdrew or defaulted **and then eliminating all bids** of the second highest bidder which raised its own bid. No price reduction below the high bid established in any round which involved **three bidders** is contemplated. This in essence would reset the auction to price levels which would have existed as if the final high bidder **had never participated**. That previous high bidder has the **option to decline** the offer from the FCC with absolutely **no penalty**, in which case the allotment will be placed in the next available FM auction.

Limiting use of the new entrant bidding credit **to entities which truly deserve the credit** by limiting the **total net worth** is a novel idea. However, provisions must be made to prevent the use of a corporate type of structure from being used to avoid the intent of limiting the applicability of the credit. A provision should also be designed to insure that all assets of both spouses. When a bidder has family members already engaged in broadcasting the new entrant credit should be withheld if the bidder has worked for said family business in a management position during the previous two years.

Clarification of Initial Comments

The use of a bidding credit by a winning bidder should be eliminated **once** that entity has an attributable interest in **more than three media facilities**. In Auction 37 it appears that the bidding credit was applied on all such allotments acquired by a single entity in the auction notwithstanding the fact that the **final** attributable interest (after including auction allotments) exceeded three media facilities. If the entity has no attributable interests at the beginning of the auction it would be limited to using its bidding credit on the three most expensive allotments acquired in that auction. **All additional allotments above the initial three on which the credit is applied would be at full bid value.**

The filing freeze would not impact any rule making which does not require modification of one of the auction allotments nor would it apply to applications proposing 73.215 contour protection of an auction allotment.

Closing

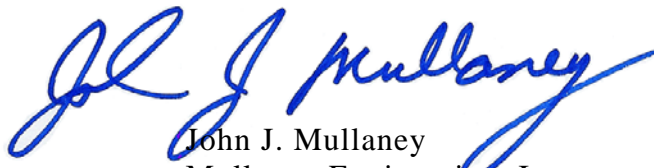
MEI hopes the Commission will review all of the comments submitted herein with an **open mind**. MEI wishes to remind the FCC that it is currently **impossible** for members of the **general public to exercise due diligence** on any allotment which currently conflicted based upon CDBS (the only source of broadcast engineering data made available to the public by the FCC). It is the **responsibility and obvious obligation** of the FCC to **first exercise “its own” due diligence** and determine that any channel offered at auction is **not** currently under consideration for modification (including reconsideration of any FCC decision) and that all foreign concurrences have been received with any international limitations being previously disclosed to the public. **Nineteen** such conflicted FM allotments have already been identified for **removal from Auction 62**.

Respectfully submitted,

MULLANEY ENGINEERING, INC.

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By:



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