

**Federal Communications Commission
Washington, DC 20554**

July 18, 2018

1800B3-RFS

Melodie A. Virtue, Esq.
1000 Potomac Street NW
Suite 200
Washington, DC 20007

Re: Douglas P. Bennett
KDVQ(FM), Batesville, Texas
Facility Id. 198796

Application for Construction Permit
BNPH-20151013AEA

Assignment of License
BAPH-20180518APC

Dear Ms. Virtue:

On December 4, 2015, the Commission granted Douglas P. Bennett's (Bennett) construction permit application for Batesville, Texas, as the winning bidder in Broadcast Auction 98.¹ Having qualified to participate in Broadcast Auction 98 as a designated entity, Bennett received a 35 percent new entrant bidding credit.²

On May 18, 2018, Bennett filed the above-referenced application seeking to assign the facility construction permit to Carlos Lopez (Lopez), an entity eligible for the lower bidding credit amount of 25 percent. The application is under review and is being prepared for grant. However, because Lopez does not qualify for the 35 percent new entrant bidding credit, as a condition of Commission approval of the proposed assignment, Bennett must make an unjust enrichment payment to reimburse the Commission for the difference between the bidding credit he received and the bidding credit for which Lopez would qualify.³ This unjust enrichment payment is calculated as the amount of Bennett's bidding credit, plus interest based on the rate for ten-year U.S. Treasury obligations applicable on the date the construction permit was granted. The percentage of the bidding credit that must be repaid is reduced over time. However, an assignment made in the third year after issuance of the construction

¹ See *Broadcast Actions*, Public Notice, Report No. 48628 (December 9, 2015).

² See *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, First Report and Order, 13 FCC Rcd 15920, 15997-15998 (1998) ("*Broadcast First Report and Order*"). See also 47 C.F.R. § 73.5007(a).

³ See 47 C.F.R. §§ 1.2111(d)(1); 73.5007(c).

permit to the winning bidder, as in the instant case, will result in a forfeiture of seventy-five (75%) percent of the value of the bidding credit.⁴

To ensure efficiency in the processing and consummation of assignments of licenses and transfers of control, the Commission recently clarified, *inter alia*, Section 1.2111(c) of the rules and explained that approval of assignments of licenses and transfers of control that result in unjust enrichment with respect to bidding credits would be conditioned upon full payment of the required unjust enrichment payment *on or before the consummation date*. Consummation of such assignment of license or transfer of control, the Commission emphasized, would not be valid unless the Commission first receives the required unjust enrichment payment in full.⁵

Accordingly, the Commission must receive an unjust enrichment payment on or before the consummation of the above-referenced application for assignment of the construction permit for KDVQ(FM), Batesville, Texas. Please note that if the unjust enrichment payment is not received prior to staff grant of the application for assignment, the grant will be conditioned on reimbursement on or before consummation.

The spreadsheet attached to this letter sets forth the bidding credit balance. The interest due on the bidding credit has also been calculated through and including July 20, 2018. For each day after July 20, 2018, the daily interest, *as it appears in the spreadsheet*, must be added to the amount paid to the Commission. These amounts must be submitted to the Commission by wire transfer, consistent with auction payment rules. For payment instructions, please contact Gail Glasser, Office of the Managing Director, Financial Operations Center, Auctions Accounting Group, at (202) 418-0578.

Sincerely,



Lisa Scanlan, Deputy Chief
Audio Division
Media Bureau

Enclosures

⁴ See 47 C.F.R. § 73.5007(c).

⁵ *Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures*, Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making, WT Docket 97-82, 15 FCC Rcd 15293, 15314-15 (2000).