

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

October 12, 2018

In Reply Refer to:
1800B3-RDH

John Neely, Esq.
c/o Audion Communications, LLC
Miller and Neely, PC
3750 University Blvd., West
Suite 203
Kensington, MD 20895

Re: KSGX(FM), Toquerville, UT
Facility ID. 198815

Application for Construction Permit
File No. BNPH-20151009AIW

Assignment of Construction Permit
File No. BAPH-20180822AAB

Dear Mr. Neely:

On November 9, 2015, the Commission granted Audion Communications, LLC's (Audion), construction permit application for Toquerville, Utah, as the winning bidder in Broadcast Auction 98.¹ Having qualified to participate in Broadcast Auction 98 as a designated entity, Audion received a 25 percent new entrant bidding credit.²

On August 22, 2018, Audion filed the above-referenced application seeking to assign the facility construction permit to Redrock Broadcasting, Inc. (Redrock), a non-designated entity not meeting the eligibility criteria for the new entrant bidding credit. The application is under review and is being prepared for grant. However, because Redrock does not meet the new entrant bidding credit eligibility criteria, as a condition of Commission approval of the proposed assignment, Audion must make an unjust enrichment payment to reimburse the Commission for the amount of the bidding credit it received.³ This unjust enrichment payment is calculated as the amount of Audion'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 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

¹ See *Broadcast Actions*, Public Notice, Report No. 48611 (November 13, 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).

⁴ See 47 C.F.R. § 73.5007(c).

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 Toquerville, Utah. 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 October 12, 2018. For each day after October 12, 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

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).