



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
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DA 01-1347

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FCC ANNOUNCES IT IS PREPARED TO GRANT FM BROADCAST CONSTRUCTION PERMIT FOR BILTMORE FOREST, NORTH CAROLINA AFTER FINAL PAYMENT IS MADE

Balance of Winning Bid due by June 15, 2001

Auction No. 25

By this *Public Notice*, the Mass Media Bureau, under delegated authority, announces that it is prepared to grant the construction permit application listed in **Attachment A** of this Public Notice following the full and timely payment of the remaining balance of the applicant's winning bid.

On October 8, 1999, the Federal Communications Commission completed the auction of 118 broadcast construction permits for new AM, FM, FM Translator, full power television, low power television and TV Translator stations.¹ Thereafter the Mass Media Bureau and the Wireless Telecommunications Bureau announced that Liberty Productions, a Limited Partnership ("Liberty"), was the winning bidder for Channel 243A at Biltmore Forest, North Carolina (FM Market 84).² Liberty submitted its down payment and pursuant to the Commission's competitive bidding procedures for the frozen hearing cases, the hearing proceeding in MM Docket No. 88-577 resumed to resolve a basic qualifications hearing issue involving Liberty³ and to allow the filing and consideration of any amendment to Liberty's long-form application and of any further motions to enlarge issues against Liberty⁴ in accordance with the Commission's routine

¹ See *Public Notice*, "Closed Broadcast Auction No. 25 Closes," DA 99-2153 (released October 12, 1999).

² See *Public Notice*, "Closed Broadcast Auction," DA 99-2153 (released October 12, 1999).

³ See *Public Notice*, "Clarification Regarding the Resumption of Hearing Proceeding in MM Docket No. 88-577 to Consider Winning Bidder's Basic Qualifications and to Clarify Amendment Procedures," DA 99-2355 (released October 28, 1999), citing *Implementation of 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services, First Report and Order* in MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, 13 FCC Rcd 15,920, 15,955 ¶ 97 (1998) ("Broadcast First Report and Order").

⁴ *Liberty Productions*, FCC 99I-23 (OGC released November 23, 1999).

adjudicatory procedures. Having resolved the basic qualifying issue and all post-auction petitions to enlarge issues in Liberty's favor, the Commission granted Liberty's application and dismissed the applications of all competing parties, both of which actions were conditioned upon the full payment of the gross amount of Liberty's high bid of \$2,336,000 in accordance with established bid payment procedures.⁵

Therefore, pursuant to the procedures adopted in the *Broadcast First Report and Order*, *supra*, Liberty must submit a lump sum final payment within **ten business days** of the date of this *Public Notice* (i.e., by June 15, 2001).⁶

Note that the Commission's Part 1 competitive bidding rules provide for an additional ten business day grace period for applicants who fail to meet the initial ten business day payment deadline.⁷ Section 1.2109(a) of the Commission's Rules provides that if a winning bidder fails to pay the balance of its winning bid(s) in a lump sum by the applicable deadline specified by the Commission, it may make a late payment within ten business days after the payment deadline (i.e. by June 25, 2001), provided that it also pays a late fee equal to five percent of the amount due.⁸ Accordingly, if Liberty fails to pay the balance of its winning bid by the late payment deadline of June 25, 2001, it will be considered in default and subject to the applicable default payment and procedural provisions specified in the Commission rules;⁹ it will in that event be assessed a default payment as proscribed by Commission rules. *See generally* 47 C.F.R. §§ 1.2104 (g)(2), 1.2109(a), 73.5004.

By subsequent *Public Notice*, upon the Commission's timely receipt of the final payment of the winning bid amount and Liberty's compliance with all applicable payment procedures, the Mass Media Bureau will announce the grant of the construction permit to Liberty. Its facility authorization will be issued shortly thereafter. The dismissal of the applications of the unsuccessful competing bidders for the Biltmore Forest allotment, FM Market 84 in Auction 25, pursuant to the Commission's Memorandum Opinion and Order, FCC 01-129 (released May 29, 2001), will become effective upon release of the above-described *Public Notice* announcing the

⁵ *Liberty Productions, a Limited Partnership*, FCC 01-129 (released May 25, 2001).

⁶ *See* 47 C.F.R. § 73.5003(c); 1.2109(a).

⁷ *See* Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374 (1997) (amending the Commission's Part 1 competitive bidding rules); *see also* 47 C.F.R. § 1.2109(a) (as amended).

⁸ *See* 47 C.F.R. § 1.2109(a).

⁹ *See e.g.* 47 C.F.R. §§ 73.5003(c); 1.2104(g)(2) (as amended), 1.2109, 1.2107(b); *see also Public Notice*, "Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules," DA 96-481, 11 FCC Rcd 10853 (1996); *Broadcast First Report and Order*, 13 FCC Rcd 15952, ¶ 86 (while Section 1.2109 generally gives the Commission discretion to either reauction licenses to existing or new applicants, or to offer licenses to other high bidders in the event of default by, or disqualification of, the winning bidder, offering the construction permit to the next highest bidder best comports with the statutory participation restrictions in Auction 25.)

grant of a construction permit for a new FM broadcast station on Channel 243A at Biltmore Forest, North Carolina.

PAYMENT INSTRUCTIONS

Payment must be made in U.S. currency in the form of a wire transfer. *See* 47 C.F.R. § 1.2107(b). No personal checks, cashier's checks or other forms of payment will be accepted.

Wire transfer payments must be received by Mellon Bank by **6:00 p.m. Eastern Time, on June 15, 2001 (or 6:00 p.m. Eastern Time, June 25, 2001, along with the five percent late fee)**. All applicants must allow sufficient time for the wire transfer to be initiated and for the transmission to be completed prior to the deadline. To submit funds by wire, Liberty will need the following information to properly effect the transmittal:

ABA Routing Number: 043000261

Receiving Bank: Mellon Pittsburgh

BNF: FCC/Account #911-6106

OBI Field: (Skip one space between each information item)

"AUCTIONPAY"

TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, Block 12)

PAYMENT TYPE CODE (enter "A25D")

FCC CODE 1 (same as FCC Form 159, Block 28A: "25")

PAYOR NAME (same as FCC Form 159, Block 2)

LOCKBOX No.: 358850

Payments must be accompanied by a completed FCC Remittance Advice Form (FCC Form 159). **A partially completed FCC Form 159 will be sent to the applicant.** On the same business day that the applicant pays the balance due to Mellon Bank, the applicant must submit a completed FCC Form 159 via facsimile at (412) 209-6045, at least one hour prior to placing the order for the wire transfer. On the FCC Form 159, applicants must use the same FCC Taxpayer Identification Number (TIN) used on their Form 175.

For questions regarding the calculation and submission of final payment, the FCC Form 159 and refunds, contact Gail Glasser or Tim Dates, Office of the Managing Director, Financial Operations Center, Auctions Accounting Group, at (202) 418-1995.

For questions regarding legal matters and licensing issues, contact Jean Ann McGovern, or Michael Wagner, Mass Media Bureau, Audio Services Division at 418-2700.

This Public Notice contains the following attachment:

Attachment A: Auction 25 Applications Ready for Grant

ATTACHMENT A

**FM
APPLICATIONS**

<u>Market</u>	<u>Applicant</u>	<u>File No.</u>	<u>City & State</u>
FM84	Liberty Productions, a Limited Partnership	BPH-870831MI	Biltmore Forest, North Carolina