

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

April 17, 2019

*In Reply Refer to:*  
**1800B3-ACS**

Gregg Skall, Esq.  
Womble Bond Dickinson LLP  
1200 19<sup>th</sup> Street, NW  
Fifth Floor  
Washington, DC 20036

Re: KBOQ(FM), Lima, Montana  
Facility ID. 198810

Application for Construction Permit  
File No. BNPH-20151009AIT

Assignment of License  
File No. BALH-20181212AAS

Dear Mr. Skall:

On November 5, 2015, the Commission granted Rubin Broadcasting, Inc.'s (Rubin), construction permit application for Lima, Montana, as the winning bidder in Broadcast Auction 98.<sup>1</sup> Having qualified to participate in Broadcast Auction 98 as a designated entity, Rubin received a 25 percent new entrant bidding credit.<sup>2</sup>

On December 12, 2018, Rubin filed the above-referenced application seeking to assign the facility construction permit to Southwest Montana Media, LLC (Southwest), 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 Southwest does not meet the new entrant bidding credit eligibility criteria, as a condition of Commission approval of the proposed assignment, Rubin must make an unjust enrichment payment to reimburse the Commission for the amount of the bidding credit it received.<sup>3</sup> This unjust enrichment payment is calculated as the amount of Rubin'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 fourth year after issuance of the construction permit to the winning bidder, as in the instant case, will result in a forfeiture of fifty (50) percent of the value of the bidding credit.<sup>4</sup>

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<sup>1</sup> See *Broadcast Actions*, Public Notice, Report No. 48609 (November 10, 2015).

<sup>2</sup> 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).

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

<sup>4</sup> 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.<sup>5</sup>

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 Lima, Montana. 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 April 23, 2019. For each day after April 23, 2019, 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

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<sup>5</sup> *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).*