



Federal Communications Commission
Washington, D.C. 20554

September 23, 2004

DA 04-3058

F. Scott Fistel, Esq.
Law Office of Fistel & Associates, P.A.
103 Northeast Fourth Street
Fort Lauderdale, Florida 33301

Re: Ideas for Business, Inc. -- Request for Waiver of Short-Form Deadline for FM Broadcast Auction No. 37

Dear Mr. Fistel:

This letter responds to your August 31, 2004 correspondence (sent via facsimile) on behalf of Ideas for Business, Inc., d/b/a Florida Media Group ("Ideas for Business") requesting a waiver of the deadline for filing a short-form application (FCC Form 175) to participate in Auction No. 37.¹ You ask the Federal Communications Commission ("Commission") to accept Ideas for Business's short-form application, even though its application was not properly filed with the Commission by the August 6, 2004 short-form filing deadline.² You claim that Ideas for Business missed the filing deadline because your associate, Samuel Rogatinsky, thought he had submitted the short-form application to the Commission on the evening of August 5th, but there was a break in the transmission of the information. For the reasons set forth below, we deny your waiver request.

To obtain a waiver of the Commission's competitive bidding rules,³ an applicant must show: (i) that the underlying purpose of the rule would not be served, or would be frustrated, by its application in this particular case, and that the grant of the requested waiver would be in the public interest; or (ii) that the unique facts and circumstances of the particular case render application of the rule inequitable, unduly

¹ Facsimile correspondence from F. Scott Fistel, Esq. to Lisa Scanlan, Asst. Chief, Audio Division, Mass Media Bureau dated August 31, 2003 ("Waiver Request").

² *Id.* The short-form deadline was announced in a public notice released by the Media and Wireless Telecommunications Bureaus on June 10, 2004. "Auction of FM Broadcast Construction Permits Scheduled For November 3, 2004," *Public Notice*, DA 04-1699 at 20 (Jun. 10, 2004) ("*Auction No. 37 Procedures Public Notice*"). Among other things, the *Auction No. 37 Procedures Public Notice* also described procedures and provided instructions for filing short-form applications. *Id.*; see also 47 C.F.R. § 1.2105(a)(1)(i) (short-forms due on date specified by public notice).

³ The Commission's competitive bidding rules are set forth at 47 C.F.R. § 1.2101 *et seq.*

burdensome, or otherwise contrary to the public interest, or that the applicant has no reasonable alternative.⁴

The August 6, 2004, 6:00 PM ET short-form deadline was announced in the *Auction No. 37 Procedures Public Notice*, which was released by the Media and Wireless Telecommunications Bureaus (the “Bureaus”) on June 10, 2004.⁵ The Bureaus also announced in the *Auction No. 37 Procedures Public Notice* that applications could be filed at any time beginning on July 22, 2004 until the August 6, 2004 deadline.⁶ Potential applicants were also warned that late applications would not be accepted.⁷ Several measures were taken to facilitate the filing of applications. As with other auctions, applicants were able to submit applications via the Internet 24 hours per day; a public auctions seminar was held during which, among other things, use of the FCC Automated Auction System was explained and staff was made available for questions; and the FCC Technical Support Hotline was available to provide prospective applicants with assistance in the use of FCC software.⁸

You contend that your associate had informed you that he had completed a short-form application and that he believed that he had submitted that application to the Commission. In addition, you state that when your associate attempted to submit the short-form application, his computer logged out of the FCC system. You also state that your law firm had never logged into the FCC’s auction application web site prior to the evening of August 5, 2004, the day prior to the filing deadline. The waiver request also states that your associate obtained an FCC registration number (“FRN”).⁹

Based on the record before us, you have not satisfied the Commission’s criteria for granting a waiver of the short-form application deadline. The Bureaus set the deadline pursuant to Section 1.2105(a)(1).¹⁰ The rule’s underlying purpose is to establish a fixed date by which all applicants interested in participating in the auction must submit relevant information necessary to establish applicants’ qualifications to participate in an auction.¹¹ Among other things, using a fixed date also provides the Commission with sufficient time to review applications prior to the auction and identifies the

⁴ 47 C.F.R. § 1.925 (standard for rule waiver).

⁵ *Auction No. 37 Procedures Public Notice* at 11, 20.

⁶ *Id.*

⁷ *Id.*

⁸ *Auction No. 37 Procedures Public Notice* at 19-20, C-3. Potential bidders who were unable to attend the auction seminar in person could watch and listen to the seminar via a live webcast conducted by the Commission or could subsequently access an audio/visual record of the seminar at the audio/visual archives page of the Commission’s website. *Id.* at 20.

⁹ Waiver Request at 1-2. An FRN is a number assigned to a business or individual that seeks to conduct business with the Commission. A filer, licensee, certificate holder, or any entity sending payments to the Commission is required to have an FRN. Receipt of an FRN is not evidence of a complete short-form application to participate in an auction.

¹⁰ 47 C.F.R. § 1.2105(a)(1).

¹¹ See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, ¶¶ 161-68 (1994).

pool of potential bidders. You have not shown that enforcing the deadline in this case would frustrate these purposes, or would not serve them. The Commission's rules are best served by applying auction deadlines in a fair and consistent manner.

In addition, you have not demonstrated unique facts or circumstances that merit granting a waiver in this case. You have failed to provide any particular facts or other evidence that would demonstrate that you were prevented from timely submitting a short-form application by the August 6, 2004, 6:00 PM deadline. You have not alleged any circumstances that are different from those that applied to all applicants to participate in Auction No. 37. The Commission's rules and public notices provided comprehensive notice of filing procedures for Auction No. 37, including detailed instructions on the information required to be included in the attachments to the Form 175.¹² Moreover, the Commission specifically cautioned applicants to file early and allow adequate time for filing their applications and that late applications would not be accepted.¹³ The Commission's records indicate that that an application process was initiated on behalf of Ideas for Business on August 5, 2004, 9:09 PM and discontinued later that evening at 10:16 PM without submission of the application.

The Commission's electronic Form 175 includes a warning on the same page as the "SUBMIT Application" button that the Form 175 is considered submitted when the button is clicked *and* the applicant receives a confirmation message.¹⁴ You have not stated that Ideas for Business received a submission confirmation page, nor do the Commission's records indicate that Ideas for Business received a submission confirmation page. Furthermore, the Commission's records show that Ideas for Business did not receive an FCC Account number, which is automatically generated upon submission of a Form 175 application and is printed on the confirmation page. Applicants are responsible for ensuring that their computer systems are adequate to connect and interface with the Commission's filing software.¹⁵ In addition, applicants are responsible for ensuring that the filings they transmit are received by the Commission.¹⁶ The Commission will not be responsible for your associate's failure to confirm that the application had been successfully submitted to the FCC after his attempt to submit did not result in receipt of a submission confirmation page as instructed by the Commission's Public Notice and the electronic Form 175.

¹² See *Auction No. 37 Procedures Public Notice* at 14-19.

¹³ *Id.* at 20.

¹⁴ See *id.* at C-3 ("Applicant must press the **SUBMIT Application** button on the Submission page to successfully submit their FCC Form 175. Pressing **SUBMIT Application** produces a *Submission Confirmation* page showing the assigned FCC Account Number." (Boldface and italics in original.) See also, FCC Auctions Form 175 Help, <<https://auctionfiling.fcc.gov/form175/help.htm>> ("When the application has been successfully submitted to the FCC, the system displays the Submission Confirmation page, which shows the FCC Account Number assigned to your application. The FCC Account Number is a ten-digit number that the Commission will use to identify and track applications.").

¹⁵ See Letter to Mr. Jim Didier, Black Hills Broadcasting, L.L.C. from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 14 FCC Rcd 15386 (1999).

¹⁶ Documents are considered to be filed with the Commission only upon their receipt. See 47 C.F.R. § 1.7.

Accordingly, your request for a waiver of the short-form application filing deadline for Auction No. 37 is denied. This action is taken under authority delegated pursuant to Section 0.331 of the Commission's rules.¹⁷

Sincerely,

Gary D. Michaels
Deputy Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

¹⁷ 47 C.F.R. § 0.331.