



Federal Communications Commission
Washington, D.C. 20554

July 8, 2005

DA 05-1919

Gregg P. Skall, Esq.
Womble, Carlyle, Sandridge & Rice
1401 I Street N.W., Seventh Floor
Washington, DC 20005

In re: Auction No. 81
Sainte Partners II, LP
File Nos. BNPTTL-20000803ABF & BNPTTL-20000831CFN
Petition for Reconsideration and Reinstatement

Dear Mr. Skall:

This letter responds to the reconsideration petition, filed May 12, 2005, on behalf of Sainte Partners II, LP (Sainte), requesting reinstatement of two Auction No. 81 engineering proposals dismissed, on April 13, 2005, for failure to submit the required FCC Registration Number (FRN). The reconsideration petition requests reinstatement of two dismissed engineering proposals and acceptance of Sainte's FRN, submitted on May 12, which was 55 days after the announced deadline of March 18, 2005.¹ For the reasons described below, we deny Sainte's reconsideration petition.

As Sainte acknowledges in its reconsideration petition, the *FRN Public Notice* provided notice that Sainte was required to submit its FRN by March 18, 2005.² Auction No. 81 applicants were warned that failure to submit the applicant's FRN by the March 18 deadline would result in the dismissal of their engineering proposal(s) and their ineligibility to participate in the auction. Sainte does not claim a lack of notice of the March 18 FRN submission deadline.³ In fact, the reconsideration petition appears to indicate that Sainte was aware of the deadline.⁴ Instead, Sainte states that it believed it was not required to submit its FRN.⁵

¹ The FRN submission deadline was announced in a public notice released on February 28, 2005. See "Applicants for Low Power Television Construction Permits to be Awarded in Auction No. 81 Must Submit Supplemental Information by March 18, 2005," DA 05-505 (Feb. 28, 2005) (*FRN Public Notice*). The *FRN Public Notice* described the procedures and provided instructions for submission of the Auction No. 81 applicant's FRN. See also Low Power Television Auction No. 81 Scheduled for September 14, 2005; Auction No. 81 Applicants Must Provide Supplemental Information by March 18, 2005; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, DA 05-506 (Feb. 28, 2005).

² Sainte Reconsideration Petition at 1.

³ In this regard, we note that a copy of the *FRN Public Notice* was sent via certified mail to Kathleen Victory at the address specified for her because Sainte had designated Kathleen Victory as its contact representative in its auction application (FCC Form 175). Postal records indicate that the FRN Public Notice was received on behalf of Kathleen Victory on March 5, 2005, and that the certified mail return receipt card was signed by M. Clark.

⁴ Sainte Reconsideration Petition at 1.

⁵ Sainte's justification for reconsideration and reinstatement is provided in three sentences. "Applicant understood this [February 28 public] notice to apply to applicants that had not yet filed using an FRN with the Commission. Because Applicant has filed numerous other applications with the Commission using its FRN, Applicant did not respond to this Public Notice. Likewise, Applicant had changed its counsel of record since the Applications were filed in 2000, therefore Applicant's current counsel did not receive a direct mailing from the Commission regarding the FRN filing requirement." Sainte Reconsideration Petition at 1-2.

We are not persuaded that the public interest would be served by granting Sainte the requested relief. Sainte argues that it believed it did not need to submit an FRN because it had used an FRN when it filed Commission applications previously. As explained in the *FRN Public Notice*, however, an entity may have filed, over a number of years, multiple applications for diverse purposes, using a different FRN for each of its applications.⁶ It was necessary to require a new FRN submission by applicants in Auction No. 81 to distinguish between different FRNs that may have been used by the same entity at different times in the past, and so that each Auction No. 81 short-form application could be associated with its proper FRN. In addition, it was necessary to establish a deadline so that applicants for Auction No. 81 would be able to access the electronic FCC Auction System and continue to participate in the auction process. The deadline was also necessary to provide the staff with sufficient time, prior to the auction, to aid in the transfer by staff of auction applications to the new Integrated Spectrum Auction System from the Commission's Automated Auction System, which was used when these auction applications were initially filed in 2000.

Sainte's belief that it did not need to file an FRN for its auction application is not a sufficient justification to exempt Sainte from a requirement that applied uniformly to all Auction No. 81 applicants. The Commission's auction rules are best served by applying deadlines in a fair and consistent manner. By having an announced procedure which applies uniformly, we created a predictable and fair procedure for all applicants in Auction No. 81. Consistent application of the auction rules to all applicants is essential to a fair and efficient process, and is fair to all auction applicants.⁷

Sainte's argument that it changed law firm representation between 2000 and 2005 also is unconvincing. Each applicant, not the applicant's law firm, is responsible for keeping itself informed of auction events and requirements and for meeting all important auction deadlines.⁸ Moreover, the Commission specifically cautioned all Auction No. 81 applicants that failure to submit an FRN would result in the dismissal of their engineering proposal(s) and ineligibility to participate in the auction.

Accordingly, the Petition for Reconsideration and Reinstatement filed on behalf of Sainte Partners II, LP concerning its failure to submit for Auction No. 81 the required FRN by the submission deadline is denied. This action is taken under authority delegated pursuant to Sections 0.283, 0.331, and 1.106 of the Commission's rules.⁹

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

Margaret W. Wiener
Chief, Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

⁶ *FRN Public Notice* at 1.

⁷ *See, e.g., Application of Winstar Broadcasting Corp., Order on Reconsideration*, 20 FCC Rcd 2043, 2053-54 ¶ 20 (2005).

⁸ *See Two Way Radio of Carolina, Inc., Memorandum Opinion and Order*, 14 FCC Rcd 12035, 12042 ¶ 13 (1999) (Auction "applicants are responsible for maintaining current information regarding Commission rules, which may be obtained from several sources, including public notices.").

⁹ 47 C.F.R. §§ 0.283, 0.331 and 1.106.