



Federal Communications Commission
Washington, D.C. 20554

DA 05-2445

September 13, 2005

Mr. Colby M. May
TCCSA, Inc., d/b/a Trinity Broadcasting Network
205 Third Street, S.E.
Washington, DC 20003

Re: Low Power Television-Television Translator Auction No. 81
TCCSA, Inc., d/b/a Trinity Broadcasting Network
National Minority TV, Inc.

Dear Mr. May:

TCCSA, Inc., d/b/a Trinity Broadcasting Network (Trinity) and National Minority TV, Inc. (National) each filed a short-form application to participate in Auction No. 81. Neither application identified any bidding agreements. Each application identified Dr. Paul Crouch as an officer and director of the corporate applicant.¹ In National's short-form application, Dr. Crouch was identified as its vice president and one of four directors. In Trinity's short-form application, Dr. Crouch was identified as its president, an authorized bidder, and one of three directors. Trinity's application, as amended in 2005, later identified Dr. Crouch as the president and one of two directors of National. In Auction No. 81, Trinity has 39 engineering proposals in 38 MX groups and National has three engineering proposals in three MX groups. Trinity and National both have engineering proposals in MX group 82 (California 3) and MX group 138 (Idaho 3).

Applicants in Auction No. 81 competing for construction permits in the same mutual exclusivity (MX) group must affirmatively avoid all communications with each other that affect, or have the potential to affect, bids or bidding strategy,² unless the applicants identified each other on their short-form applications (FCC Form 175) as parties with which they have entered into a bidding agreement. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.³ For purposes of this prohibition, the definition of applicant includes all officers and directors of an entity submitting a short-form application.⁴ The anti-collusion rule became applicable for

¹ Short-form applications of all Auction No. 81 applicants may be viewed online at: <https://auctionfiling.fcc.gov/form175/search175/index.htm>.

² "Auction of Low Power Television Construction Permits Scheduled for September 14, 2005; Notice and Filing Requirements, Minimum Opening Bids and Other Procedures for Auction No. 81," *Public Notice*, 20 FCC Rcd 9481, 9487-88 (2005) ("Auction No. 81 Procedures Public Notice"), 70 FR 33478 (June 8, 2005), citing 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c)(1), 73.5002(d). See also "Notice and Filing Requirements Regarding July 31 through August 4, 2000 Limited Low Power Television/Television Translator/Class A Television Auction Filing Window," *Public Notice*, 15 FCC Rcd 10854, 10864-65 (Mass Media & Wireless Telecom. Burs. 2000) ("Auction No. 81 Filing Window Public Notice"); Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001).

³ *Auction No. 81 Procedures Public Notice*, 20 FCC Rcd at 9487. See also, e.g., Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626 (Enf. Bur. 2004); Letter to Robert Pettit from Margaret W. Wiener, 16 FCC Rcd 10080 (Auctions Div. 2000).

⁴ *Auction No. 81 Procedures Public Notice*, 20 FCC Rcd at 9487 citing 47 C.F.R. § 1.2105(c)(7)(i). See also 47 C.F.R. § 1.2110(c)(2)(ii)(F). In establishing the definition of "applicant" for purposes of the anti-collusion rule, the Commission stated, "Indeed, if holders of attributable interests were not considered applicants, collusive arrangements would be possible simply through the creation of a separate entity to act as the 'applicant.'"

Auction No. 81 at the short-form application filing deadline on August 4, 2000 and will remain applicable until the post-auction down payment deadline.⁵

On August 1, 2005, separate letters were sent to each applicant that included the following language:

The application identifies an officer and director for this application who is also an officer and director for another application in the same mutually exclusive (MX) group(s). The application is not in compliance with the Commission's anti-collusion requirements.

National Minority TV, Inc. made no submission to its auction application after August 1, 2005 and submitted no upfront payment. Trinity made an upfront payment. On August 12, 2005, Trinity amended its short-form application to add the following statement: Trinity "hereby certifies under penalty of perjury that it does not have any agreements, arrangements, or understanding of any kind that relate to the licenses being auctioned including any agreements relating to the post-auction market structure."

Because Dr. Paul Crouch is an officer and director of both Trinity and National, for purposes of the anti-collusion rule he is an applicant with respect to both Trinity's and National's applications to participate in Auction No. 81. Because the same person is considered to be the applicant in both instances, the bids and bidding strategies of one applicant are necessarily conveyed to the other applicant. As noted above, the anti-collusion rule applies to all applicants, whether they qualify to bid or not, from the short-form filing deadline until the post-auction down payment deadline. Accordingly, because no agreement exists between the two applicants, and Trinity and National both have engineering proposals in two of the same MX groups in Auction 81, they appear to be in violation of the anti-collusion rule.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7687-88 ¶ 9 (1994).

⁵ *Auction No. 81 Procedures Public Notice*, 20 FCC Rcd at 9487 citing 47 C.F.R. § 1.2105(c)(1). See also *Auction No. 81 Filing Window Public Notice*, 15 FCC Rcd at 10864-65.