



Federal Communications Commission  
Washington, D.C. 20554

January 9, 2006

DA 06-38

Koch Broadcasting Corporation  
c/o Harry C. Martin, Esq.  
Fletcher, Heald & Hildreth, PLC  
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Arlington, VA 22209

Birach Broadcasting Corporation  
c/o Lauren A. Colby, Esq.  
P.O. Box 113  
Frederick, MD 21705-0113

Re: Koch Broadcasting Corporation -- FCC Form 175 for AM Auction No. 84 (MX Group 84-19 -- Application for Modification to AM Radio Station WSDS(AM), Salem Township, Michigan (File No. BMJP-20040129APE)

Dear Counsel:

The Commission is in receipt of a request by Birach Broadcasting Corporation ("Birach") to amend the short-form application (FCC Form 175) filed by Koch Broadcasting Corporation ("Koch") in the January 2004 filing window during which the Commission permitted the filing of proposals for new AM stations and major modifications to authorized AM facilities.<sup>1</sup> During that filing window, Koch submitted an application for a major modification of its authorized AM station WSDS(AM), Salem Township, Michigan, seeking to change WSDS(AM)'s community of license to Plymouth, Michigan.<sup>2</sup> That proposal was found to be mutually exclusive with applications for major modifications to authorized AM stations filed by certain other AM licensees.<sup>3</sup> Accordingly, these applications are subject to competitive bidding procedures.

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<sup>1</sup> Letter from Lauren A. Colby, Esq. to Lisa A. Scanlan, Audio Division, Media Bureau, FCC File No. BMJP-20040129APE (June 23, 2005) ("*Birach Request*").

<sup>2</sup> *Id.*

<sup>3</sup> See "AM Auction No. 84 Mutually Exclusive Applications Subject to Auction; Settlement Period Announced for Certain Mutually Exclusive Application Groups; September 16, 2005 Deadline Established for Section 307(b) Submissions; AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze," *Public Notice*, Report No. AUC-05-84-E (Auction No. 84), DA 05-1604 (MB/WTB June 15, 2005).

In anticipation of such mutually exclusive applications, on November 6, 2003, the Media Bureau and Wireless Telecommunications Bureau (“Bureaus”) released a public notice announcing the filing window and other procedures for Auction No. 84.<sup>4</sup> In the *Auction No. 84 Filing Window Public Notice*, among other things, the Bureaus cautioned that “applicants will not be permitted to make major modifications to the FCC Form 175,”<sup>5</sup> citing Section 1.2105(b) of the Commission’s rules.<sup>6</sup> Section 1.2105(b)(2) states that “[m]ajor amendments cannot be made to a short-form application after the initial filing deadline. Major amendments include changes in ownership of the applicant that would constitute an assignment or transfer of control . . . .”<sup>7</sup> The Bureaus further warned that “[a]pplicants will not be permitted to make major modifications to their applications (e.g., . . . change the certifying official or change control of the applicant . . .).”<sup>8</sup>

The short form filing window closed on January 30, 2004. Subsequently, Koch sought Commission approval to assign the license for WSDS(AM) to Birach; the Media Bureau granted the application for assignment of the WSDS(AM) license from Koch to Birach on January 25, 2005, and the transaction was consummated March 30, 2005.<sup>9</sup> Birach, now the current licensee of WSDS(AM), requests that the Bureaus accept its major amendment to Koch’s short-form application to substitute Birach as the applicant and enable Birach to participate in Auction No. 84. Birach contends that “[t]he public interest will obviously be served by encouraging as many people as possible to bid.”<sup>10</sup> We do not agree. Rather, we believe that any arguable public benefit to be derived from our failing to apply Section 1.2105(b)(2)’s prohibition on major changes to short-form applications is far outweighed by the public benefit in affording all auction applicants reasonable certainty as to the fair and predictable application of our auction rules and procedures.<sup>11</sup>

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<sup>4</sup> See “AM New Station and Major Modification Auction Filing Window; Minor Modification Application Freeze,” *Public Notice*, 18 FCC Rcd 23016 (MB/WTB 2003) (“*Auction No. 84 Filing Window Public Notice*”).

<sup>5</sup> *Id.*, 18 FCC Rcd at 23018.

<sup>6</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>7</sup> *Id.*; see also 47 C.F.R. § 1.65(b) (“Applications in . . . broadcast services subject to competitive bidding will be subject to the provisions of §§ 1.2105(b), 73.5002 and 73.3522 of this chapter regarding the modification of their applications.”).

<sup>8</sup> *Auction No. 84 Filing Window Public Notice*, 18 FCC Rcd at 23021 (emphasis added); see also Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures; Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use – 4660-4685 MHz, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 416 ¶ 69 (1997) (“As in all prior auctions, an application that is amended by a major amendment will be considered newly filed, and therefore will not be accepted after the short-form filing deadline.” citing 47 C.F.R. § 1.2105(b)(2)).

<sup>9</sup> File No. BAL-20041019AAQ.

<sup>10</sup> *Birach Request* at 2.

<sup>11</sup> See, e.g., Application of Winstar Broadcasting Corp., *Order on Reconsideration*, 20 FCC Rcd 2043, 2053-54 ¶ 20 (2005); Letter to Gregg Skall, counsel to Sainte Partners II, from Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, and Barbara Kreisman, Chief, Video Division, Media Bureau, DA 05-1919 (July 8, 2005).

Koch Broadcasting Corporation

January 9, 2006

Page 3

Accordingly, the short-form application filed by Koch for Auction No. 84 and the associated engineering data contained in the supplemental Form 301 Tech Box, File No. BMJP-20040129APE, for a major modification to WSDS(AM) ARE DISMISSED.

Sincerely,

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

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

cc:

Multicultural Radio Broadcasting, Inc.

Cumulus Licensing LLC