



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

January 9, 2006

DA 06-40

Mr. Daniel W. Finch, Jr.
1800 Main Street
Sutton, West Virginia 26601

Dear Mr. Finch:

This letter is in response to your request sent to Margaret Wiener, Chief of the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division, requesting that the Federal Communications Commission ("Commission") disqualify Star Communications ("Star") from bidding in the upcoming auction of FM broadcast construction permits (Auction No. 62).¹ You contend that Star should be disqualified from participating in Auction No. 62 because of its alleged failure to disclose information in its short-form application (FCC Form 175) about a relationship that you allege exists between Star and another applicant, Aneita J. Kimes.² You further allege that these two applicants may have violated the Commission's anti-collusion rule.³

The Commission takes allegations of wrongdoing very seriously. However, we are also sensitive to the fact that any action we take at this stage of the auction, or before the long-form applications are filed, could harm the integrity of the auction process. Upon receipt of the short-form applications, the Commission carefully scrutinized each application to ensure compliance with the Commission's rules. Generally, we believe it is more prudent to address such allegations after the winning bidders have submitted their long-form applications (FCC Form 301), when there is greater opportunity for investigation of such allegations.⁴ In the absence of any such investigation, we are unable to reach any conclusion as to whether the information that you have provided is accurate or should be deemed a violation of the Commission's rules.

¹ Email from Daniel W. Finch, Jr. to Margaret Wiener, dated December 27, 2005.

² The Commission has released a list of the parties that applied to bid in Auction No. 62, including those that were determined to be non-qualified to bid in the auction. See "Auction of FM Broadcast Construction Permits; 214 Bidders Qualified to Bid in Auction No. 62," *Public Notice*, DA 05-3204 (rel. Dec. 21, 2004), as amended by *Erratum* (rel. Dec. 23, 2005).

³ See 47 C.F.R. §§ 1.2105(a)(2)(viii), 1.2105(c); see also 47 C.F.R. § 73.5002(d).

⁴ See Baker Creek Communications, L.P., For Authority to Construct and Operate Local Multipoint Distribution Services In Multiple Basic Trading Areas, DA 98-1921, *Memorandum Opinion and Order*, 13 FCC Rcd 18709 (1998); Letter from Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, to Steven R. Sixberry, Nevada Wireless, DA 00-1949 (rel. August 24, 2000).

As the bidding in Auction No. 62 has not yet been completed, we are unable, at this time, to specify the long-form application due date. Please note, however, that at the close of Auction No. 62, in accordance with Section 1.2108(b) of the Commission's rules, we will issue a public notice announcing the time frame and procedures for filing petitions to deny.

Accordingly, your request to disqualify an Auction No. 62 bidder from participating in the auction is denied.

Sincerely,

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