



Federal Communications Commission  
Washington, D.C. 20554

July 24, 2007

DA 07-3369

Lee Peltzman, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, N.W., Suite 240  
Washington, DC 20036

Re: Lawrence H. Mintz  
Digital Companion Channel Auction No. 85 (MX Group 81)  
Low Power Television station K63GZ, Midland, Texas  
Engineering Proposal File No. BSFDTL-20060630BAO

Dear Counsel:

The Commission is in receipt of a short-form application (FCC Form 175) filed by Lawrence H. Mintz ("Mintz") in the June 2006 filing window during which the Commission permitted the filing of engineering proposals for low power television digital companion channel applications.<sup>1</sup> During that filing window, Mintz submitted an engineering proposal for a digital companion channel for its existing analog low power television station K63GZ, Midland, Texas. That proposal was found to be mutually exclusive with other engineering proposals filed during the window and was assigned to MX Group 81.<sup>2</sup> Accordingly, these engineering proposals are subject to competitive bidding procedures.

In the *Auction No. 85 Filing Window Public Notice*, among other things, the Media Bureau and Wireless Telecommunications Bureau ("the Bureaus") cautioned that "applicants will not be permitted to make major modifications to the FCC Form 175,"<sup>3</sup> citing Section 1.2105(b) of the Commission's rules.<sup>4</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>5</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>6</sup>

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<sup>1</sup> "LPTV and TV Translator Digital Companion Channel Applications Filing Window for Auction No. 85," *Public Notice*, 21 FCC Rcd 4100, 4119 (MB/WTB 2006) (*Auction No. 85 Filing Window Public Notice*).

<sup>2</sup> "LPTV and TV Translator Digital Companion Channel Applications Mutually Exclusive Proposals," *Public Notice*, 21 FCC Rcd 11720 (MB/WTB 2006). As initially determined, engineering proposals submitted by Mintz, Cyril H. Miller and Una Vez Mas Midland License, LLC were assigned to MX Group 81.

<sup>3</sup> *Auction No. 85 Filing Window Public Notice*, 21 FCC Rcd at 4119.

<sup>4</sup> 47 C.F.R. § 1.2105(b)(2).

<sup>5</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."); see, e.g., *Letter to Koch Broadcasting Corp.*, 21 FCC Rcd 147 (Auc. & Audio Divs. 2006).

<sup>6</sup> *Auction No. 85 Filing Window Public Notice*, 21 FCC Rcd at 4119; see also Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *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)).

The short-form application filing window closed on June 30, 2006. Subsequently, Mintz sought Commission approval to assign the construction permit for station K63GZ to Windsong Communications, Inc. (“Windsong”). The Media Bureau granted the application for assignment of the K63GZ permit from Mintz to Windsong on December 28, 2006. The transaction was consummated on January 5, 2007.<sup>7</sup> Windsong is the current permittee of station K63GZ. Neither Mintz nor Windsong sought to amend the short-form application filed for the digital companion channel for station K63GZ.

The competitive bidding rules do not permit an assignment or transfer of control of an applicant after the initial application filing deadline. Pursuant to Section 1.2105(b)(2), we find that a major change in ownership has occurred with respect to Mintz’s short-form application filed for the digital companion channel for station K63GZ. Accordingly, the engineering data contained in the supplemental FCC Form 346 Tech Box, File No. BSFDTL-20060630BAO, for a digital companion channel for station K63GZ, associated with the short-form application filed by Mintz for Auction No. 85, IS DISMISSED.<sup>8</sup>

Sincerely,

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

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>7</sup> Assignment Application File No. BAPTTL-20061107AAW.

<sup>8</sup> There are 18 other engineering proposals (FCC Form 346 Tech Boxes) associated with Mintz's short-form application. Accordingly, we do not dismiss Mintz's short-form application in its entirety because some of these other associated engineering proposals remain pending.