

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	File No.: EB-09-IH-1532
)	
1 UGLY ENTERPRISE, LLC)	Acct. No.: 201332080019
)	
Applicant in Auction No. 79)	FRN: 0018897280
)	
)	

ORDER

Adopted: May 9, 2013

Released: May 14, 2013

By the Chief, Enforcement Bureau:

1. In this Order, we adopt a Consent Decree entered into between the Enforcement Bureau (Bureau) of the Federal Communications Commission and 1 Ugly Enterprise, LLC (1 Ugly Enterprise). The Consent Decree terminates the Bureau’s investigation into possible violations by 1 Ugly Enterprise of Section 1.2105(c) of the Commission’s Rules, 47 C.F.R. § 1.2105(c), relating to prohibited contacts and communications and the non-disclosure of such contacts and communications in Commission auctions.

2. A copy of the Consent Decree, negotiated by the Bureau and 1 Ugly Enterprise, is attached hereto and incorporated herein by reference.

3. After evaluating the facts before us and reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether 1 Ugly Enterprise possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Communications Act of 1934, as amended,¹ and Sections 0.111 and 0.311 of the Rules,² the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. §§ 154(i), 503(b).

² 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to: James L. Oyster, Esq., counsel for 1 Ugly, LLC, 108 Oyster Lane, Castleton, VA 22716-2839.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission, 1 Ugly Enterprise, LLC, and Matthew Salazar, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations by 1 Ugly Enterprise of Section 1.2105(c) of the Commission's Rules,¹ relating to prohibited contacts and communications in Commission auctions.

I. DEFINITIONS

2. For purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting this Consent Decree without any modifications adverse to 1 Ugly Enterprise, LLC.
 - (c) "1 Ugly Enterprise" or the "Company" means 1 Ugly Enterprise, LLC, of which Matthew Salazar is the sole principal, and its predecessors-in-interest and successors-in-interest.
 - (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (e) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which 1 Ugly Enterprise

¹ 47 C.F.R. § 1.2105(c).

is subject by virtue of its business activities.

- (g) “Deborah Salazar” means Deborah Salazar, an applicant in Auction No. 79.
- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Investigation” means the Bureau’s investigation of 1 Ugly Enterprise’s compliance with Section 1.2105(c) of the Commission’s rules, arising from its conduct in Auction No. 79.
- (j) “Jesus Salazar” means Matthew Salazar’s father, Deborah Salazar’s spouse, and an authorized bidder for Deborah Salazar in Auction No. 79.
- (k) “Matthew Salazar” means the sole principal of 1 Ugly Enterprise and the son of Deborah Salazar and Jesus Salazar.
- (l) “Parties” means the Bureau, 1 Ugly Enterprise, LLC and Matthew Salazar, each of which is a “Party.”
- (m) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 1.2105(c)(1) of the Rules, commonly referred to as the Commission’s “anti-collusion rule,” prohibits auction applicants for licenses in any of the same geographic license areas from “cooperating or collaborating with respect to, discussing with each other, or disclosing to each other in any manner the substance of their own, or each other’s, or any other competing applicants’ bids or bidding strategies, or discussing or negotiating settlement agreements” beginning immediately after the short-form application filing deadline until after the down payment deadline “unless such applicants are members of a bidding consortium or other joint bidding arrangement identified on the bidder’s short-form application”² In addition, Section 1.2105(c)(6) of the Rules requires that “[a]ny applicant that makes or receives a communication of bids or bidding strategies prohibited under [Section 1.2105(c)(1) of the Rules] shall report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs.”³

4. On February 27, 2009, the Commission’s Wireless Telecommunications Bureau and Media Bureau announced the auction of 122 FM broadcast construction permits in Auction No. 79.⁴ For Auction No. 79, the anti-collusion rule prohibitions were in effect from 6:00 p.m. ET on June 25, 2009, the short-form application filing deadline, until October 2, 2009, the down payment deadline.⁵ Bidding in Auction No. 79 began on September 1, 2009, and concluded on September 15, 2009.

² 47 C.F.R. § 1.2105(c)(1).

³ *Id.* § 1.2105(c)(6).

⁴ *Auction of FM Broadcast Construction Permits Scheduled for September 1, 2009; Comment Sought on Competitive Bidding Procedures For Auction 79*, Public Notice, 24 FCC Rcd 2589 (2009).

⁵ *Auction of FM Broadcast Construction Permits Scheduled for September 1, 2009; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 79*, Public Notice, 24 FCC Rcd 4448 (2009).

5. 1 Ugly Enterprise is a limited liability company based in San Angelo, Texas. Its sole owner is Matthew Salazar. Deborah Salazar is an individual residing in Uvalde, Texas and is the mother of Matthew Salazar. On June 25, 2009, 1 Ugly Enterprise and Deborah Salazar each submitted a short-form application to participate in Auction No. 79.⁶ 1 Ugly Enterprise selected nine construction permits on which it intended to bid in Auction No. 79, including the construction permit for the Peach Springs, Arizona, market. Deborah Salazar also identified the construction permit for the Peach Springs, Arizona, market as among the construction permits on which she intended to bid. Additionally, in its short-form application, 1 Ugly Enterprise identified Matthew Salazar as its sole authorized bidder. In her short-form application, Deborah Salazar specified that she and her spouse, Jesus Salazar, father of Matthew Salazar, would serve as authorized bidders. Neither 1 Ugly Enterprise nor Deborah Salazar identified the existence of any joint bidding consortium or agreement between them nor did they disclose that Deborah Salazar and Jesus Salazar were Matthew Salazar's parents. Because these two applicants did not disclose the existence of any bidding agreement between them, the Commission's anti-collusion rule prohibited them from communicating with each other about bids or bidding strategies during the prescribed period.

6. At the conclusion of Auction No. 79, 1 Ugly Enterprise was the winning bidder for an FM construction permit in Leakey, Texas. Thereafter, on July 31, 2009, 1 Ugly Enterprise submitted its upfront payment to the Commission along with a Remittance Advice Form (FCC Form 159). A review of the FCC Form 159 revealed that Jesus Salazar, the authorized bidder for Deborah Salazar, had signed the FCC Form 159 certifying that he was the responsible party for making 1 Ugly Enterprise's upfront payment of \$2,500. This prompted the Wireless Telecommunications Bureau to refer the matter to the Enforcement Bureau for investigation of a potential violation of Section 1.2105(c) of the Commission's Rules.

7. On October 22, 2009, the Enforcement Bureau commenced its Investigation by issuing letters of inquiry to 1 Ugly Enterprise, Deborah Salazar, and Jesus Salazar. The letters of inquiry sought information about, among other things, their respective conduct in Auction No. 79. In its response, 1 Ugly Enterprise stated that Matthew Salazar had communicated with Jesus Salazar a short time prior to the commencement of bidding regarding the construction permits on which 1 Ugly Enterprise intended to bid in Auction No. 79. The record also revealed that Jesus Salazar had paid 1 Ugly Enterprise's upfront payment from his own account to the Commission's auction payment lockbox bank, the U.S. Bank in St. Louis, Missouri. The record also revealed that Deborah Salazar had called Jesus Salazar's bank to initiate the wire transfer for 1 Ugly Enterprise. Neither 1 Ugly Enterprise nor Deborah Salazar notified the Commission about the communication between the two applicants, or between 1 Ugly Enterprise and Jesus Salazar.

8. Following the Investigation, the Bureau, 1 Ugly Enterprise and Matthew Salazar entered into discussions aimed at resolving the Investigation. Between April and November, 2012, 1 Ugly Enterprise provided financial information to the Bureau documenting its claimed inability to pay a large forfeiture or voluntary contribution.

III. TERMS OF AGREEMENT

9. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting

⁶ See FCC Form 175 of 1 Ugly Enterprise, LLC, Application to Participate in an FCC Auction, submitted on June 25, 2009 at 2:53 p.m. ET; FCC Form 175 of Deborah Salazar, Application to Participate in an FCC Auction, submitted on June 25, 2009 at 2:52 p.m. ET. 1 Ugly Enterprise and Deborah Salazar were classified as eligible to participate in the auction. See *Auction of FM Broadcast Construction Permits: 77 Bidders Qualified to Participate in Auction 79*, Public Notice, 24 FCC Rcd 10782 (2009).

Order.

10. **Jurisdiction.** 1 Ugly Enterprise and Matthew Salazar agree that the Bureau has jurisdiction over them and the matters contained in this Consent Decree and that the Bureau has authority to enter into and adopt this Consent Decree.

11. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission Order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

12. **Termination of Investigation.** 1 Ugly Enterprise represents that it does not hold any FCC licenses or authorizations other than the construction permit that it won in Auction No. 79 for a new FM station at Leakey, Texas. Matthew Salazar represents that he does not individually hold any FCC licenses or authorizations. In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, 1 Ugly Enterprise and Matthew Salazar agree to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, any new proceeding, formal or informal, or take any action on its own motion against 1 Ugly Enterprise or Matthew Salazar concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, any proceeding, formal or informal, or take any action on its own motion against 1 Ugly Enterprise with respect to 1 Ugly Enterprise's basic qualifications, including its character qualifications to be a Commission licensee or to hold Commission licenses or authorizations.

13. **Settlement Terms.** For purposes of settling the matters set forth herein, 1 Ugly Enterprise and Matthew Salazar agree to the following:

- (a) 1 Ugly Enterprise agrees that within five (5) business days of the Effective Date, it shall surrender to the Commission for cancellation the construction permit it won in Auction No. 79. It shall simultaneously send electronic notification of the surrender of its construction permit to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov and to Brian J. Carter at Brian.Carter@fcc.gov.
- (b) 1 Ugly Enterprise agrees to forfeit any and all monies paid to U.S. Bank relating in any manner whatsoever to its participation in Auction No. 79, and relinquish any claims thereto, including, but not limited to, its upfront payment, down payment, and any payments 1 Ugly made in connection with the construction permit for which it was the highest bidder.
- (c) 1 Ugly Enterprise agrees that it will not participate in any future auctions conducted by the Commission.
- (d) Matthew Salazar agrees that he: (i) will not participate in any future auctions conducted by the Commission in his own capacity; (ii) will not participate in any future auctions conducted by the Commission on behalf of any other person or entity; and (iii) will not hold a position or interest of any kind and to any extent

whatsoever (financial or otherwise) in an entity that participates in any future auctions conducted by the Commission. Nothing in this subparagraph shall prevent Matthew Salazar from holding a position or interest in an entity that is publicly traded on the New York Stock Exchange or the NASDAQ Stock Market.

14. **Compliance Reports.** 1 Ugly Enterprise and Matthew Salazar shall each file a Compliance Report with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date. 1 Ugly Enterprise and Matthew Salazar shall certify in their respective Compliance Reports to their compliance with the terms and conditions contained in this Consent Decree. If they are unable to provide the requisite certification, they shall provide a full and complete explanation of the reasons why they are not able to do so. All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, S.W., Washington, D.C. 20554, with copies submitted electronically to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov and to Brian J. Carter at Brian.Carter@fcc.gov.

15. **Voluntary Contribution.** 1 Ugly Enterprise agrees that it will make a voluntary contribution to the United States Treasury in the total amount of \$5,000.00. This amount was arrived at after careful consideration of 1 Ugly Enterprise's claimed inability to pay a large voluntary contribution and documentation submitted by 1 Ugly Enterprise to the Bureau in support thereof. The total payment shall be made within 30 days after the Effective Date. 1 Ugly Enterprise shall also send electronic notification of payment to Theresa Z. Cavanaugh at Terry.Cavanaugh@fcc.gov and to Brian J. Carter at Brian.Carter@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.⁷ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions regarding the form of payment:⁸

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO.

⁷ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

⁸ Questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e-mail at ARINQUIRIES@fcc.gov.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone at 1-877-480-3201, or by e-mail at ARINQUIRIES@fcc.gov.

16. **Waivers.** 1 Ugly Enterprise and Matthew Salazar waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. 1 Ugly Enterprise and Matthew Salazar shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission), brings a judicial action to enforce the terms of the Adopting Order, neither 1 Ugly Enterprise, Matthew Salazar nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and 1 Ugly Enterprise and Matthew Salazar shall waive any statutory right to a trial *de novo*. 1 Ugly Enterprise and Matthew Salazar hereby agree to waive any claims they may otherwise have under the Equal Access to Justice Act⁹ relating to the matters addressed in this Consent Decree.

17. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

18. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of the Consent Decree to which 1 Ugly Enterprise and Matthew Salazar do not expressly consent) that provision will be superseded by such Rule or Commission order.

19. **Successors and Assigns.** 1 Ugly Enterprise agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

20. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

21. **Modifications.** This Consent Decree cannot be modified without the advance written consent of all Parties.

22. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

23. **Authorized Representative.** The individual signing this Consent Decree on behalf of 1 Ugly Enterprise represents and warrants that he is authorized by 1 Ugly Enterprise to execute this Consent Decree and to bind 1 Ugly Enterprise to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

24. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

⁹ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501-1.1530.

By: _____
P. Michele Ellison, Chief
Enforcement Bureau
Federal Communications Commission

By: _____
Matthew Salazar, individually, and
on behalf of 1 Ugly Enterprise, LLC

Date: _____

Date: _____