



Federal Communications Commission
Washington, D.C. 20554

DA 21-781

July 1, 2021

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

Mr. Paul S. Alexander, Jr.
74 Pardue Drive
Valley Grande, AL 36701

Mr. Mark Lipp
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street
Suite 1100
Arlington, VA 22209

Re: AM and FM Broadcast Auction 109 – AU Docket No. 21-39
Short-Form Application (FCC Form 175) of Paul S. Alexander, Jr.

Dear Mr. Alexander:

On May 10, 2021, you filed an application to participate in Auction 109, an auction of AM and FM broadcast construction permits.¹ On July 1, 2021, the Office of Economics and Analytics (OEA) and the Media Bureau (MB) released a Public Notice announcing the applicants that are qualified to bid in Auction 109.² In that Public Notice, you were found to be non-qualified to bid in Auction 109. This letter explains the reasons for that determination.

Both you and Scott Communications, Inc. (SCI) timely submitted short-form applications (FCC Form 175) to participate in Auction 109. Each application identified Mark Lipp, an attorney at Fletcher, Heald & Hildreth, as the contact representative for the application.³ During review of these short-form applications, Commission staff identified a relationship between you and SCI that was not disclosed in your respective applications. Specifically, the sole stockholder of SCI, Paul S. Alexander, Sr. (Scott Alexander), is your father, and the secretary of SCI, Lorraine Alexander, who was reported as a disclosable interest holder (DIH) on SCI's short-form application, is your mother.⁴ In addition, on its

¹ Short-form Application of Paul S. Alexander, Jr. to Participate in Auction 109 (FCC Form 175), File No. 0009543337 (filed May 10, 2021) and amendments (filed June 11, 2021 and June 16, 2021) (*Paul Alexander Form 175*); Short-form Application of Scott Communications, Inc. to Participate in Auction 109 (FCC Form 175), File No. 0009545496 (filed May 11, 2021) and amendments (filed June 11, 2021 and June 16, 2021) (*SCI Form 175*).

² *Auction of AM and FM Broadcast Construction Permits, 114 Bidders Qualified to Participate in Auction 109, One FM Broadcast Construction Permit Removed from Auction 109*, AU Docket No. 21-39, Public Notice, DA 21-780 (OEA/MB July 1, 2021).

³ *Paul Alexander Form 175; SCI Form 175* (Mark Lipp was removed as the contact representative for SCI through an amendment filed June 11, 2021).

⁴ *SCI Form 175*.

2019 biennial broadcast ownership report (FCC Form 323), SCI reported that you are an officer of SCI,⁵ and thus you have an attributable interest in SCI pursuant to note 2(g) to section 73.3555 of the Commission's rules.⁶ Notably, although both you and Lorraine Alexander are identified as officers on SCI's most recent biennial broadcast ownership report, Lorraine Alexander was identified as a DIH on SCI's short-form application while you were not.⁷

In your originally filed short-form application, you requested a 25% new entrant bidding credit. Applicants seeking a new entrant bidding credit are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for the bidding credit. An applicant claiming that it qualifies for a 25% new entrant bidding credit must certify that neither it nor any of its attributable interest holders has any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.⁸ In that regard, in your originally filed short-form application, you disclosed that you are the sole owner of FM translator broadcast station W265BO, Facility ID No. 151004, York, Alabama.⁹ You neglected, however, to disclose your attributable interest in SCI and its two full service FM and AM broadcast stations.¹⁰

On June 3, 2021, OEA and MB released a public notice that identified the status of each short-form application submitted in Auction 109 as complete, incomplete, or rejected, and opened a filing window from June 3, 2021 to June 16, 2021 for applicants with incomplete applications to correct deficiencies and resubmit their applications.¹¹ This public notice also set the deadline for submitting upfront payments for Auction 109 at 6:00 p.m. Eastern Time on Wednesday, June 16, 2021. Both your application and the SCI application were designated as incomplete due to the apparent, but undisclosed, relationship between you and SCI.¹² A letter for each application describing the deficiencies in the application was sent to Mark Lipp.¹³ In response to the deficiency letters, Mr. Lipp contacted the Commission staff and confirmed in a telephone call on June 8, 2021 that you are a current officer of SCI. The Commission staff informed Mr. Lipp that your officer position in SCI raised concern regarding your

⁵ Scott Communications, Inc. Commercial Broadcast Stations Biennial Ownership Report (FCC Form 323), LMS File No. 000093548 (filed Dec. 17, 2019) (reporting attributable interests in SCI as of October 1, 2019) (*SCI Form 323*).

⁶ 47 CFR § 73.3555 note 2(g).

⁷ *SCI Form 175*.

⁸ See 47 CFR §§ 73.5007, 73.5008.

⁹ *Paul Alexander Form 175*. Attributable interests in existing FM translator stations are not counted among the applicant's other mass media interests in determining its eligibility for a new entrant bidding credit. 47 CFR § 73.5007; *Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 109*, AU Docket No. 21-39, Public Notice, DA 21-361, 20, para. 62 (OEA/MB Apr. 1, 2021) (*Auction 109 Procedures Public Notice*).

¹⁰ See *Paul Alexander Form 175*.

¹¹ *Auction of AM and FM Broadcast Construction Permits Scheduled for July 27, 2021; Status of Short-Form Applications to Participate in Auction 109*, Public Notice, DA 21-628 (OEA/MB Jun. 3, 2021) (*Auction 109 Status Public Notice*).

¹² See *Auction 109 Status Public Notice*, Attachment B.

¹³ Letter to Paul S. Alexander, Jr. c/o Mark Lipp from the Federal Communications Commission (June 3, 2021) (*Paul Alexander Deficiency Letter*); Letter to Scott Communications, Inc. c/o Mark Lipp from the Federal Communications Commission (June 3, 2021) (*SCI Deficiency Letter*).

ability to comply with the Commission's prohibition on certain communications between auction applicants. On June 15, 2021, Mr. Lipp had a second telephone conversation with Commission staff, during which additional concerns regarding your role at SCI and your ability to comply with the prohibited communications rule were raised.

During the resubmission period, both applications were amended to disclose your relationship with SCI.¹⁴ Specifically, you amended your application to indicate that you are the Vice President of SCI, and your primary day-to-day responsibilities include managing advertising sales for the broadcast stations licensed to SCI.¹⁵ You also disclosed that you have an attributable interest in both of the stations licensed to SCI.¹⁶ Your application was also amended to include a description of internal controls that you "instituted since the filing of the short form application to safeguard against any prohibited communication."¹⁷ As described in your application these controls include that you do not "discuss any matters relating to the auction, including bidding strategies and auction bids with any other principal of SCI or any other party to the auction or anyone likely to pass information along to another party in the auction."¹⁸ In addition, you submitted an upfront payment by the relevant deadline.

After the deadline for filing a short-form application, all applicants in Auction 109 are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicant's bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after

¹⁴ See amendments to *Paul Alexander Form 175* filed June 11, 2021 and June 16, 2021 and amendments to *SCI Form 175* filed June 11, 2021 and June 16, 2021.

¹⁵ *Paul Alexander Form 175*, as amended June 16, 2021, Exhibit: Declaration of Paul S. Alexander, Jr. In your Declaration, you note that you "are aware of certain press articles and a State of Alabama filing in which [your] title was listed as President." You indicate that these are incorrect and explain that "on occasion, there is confusion with [your] name and [your] father's name, Paul S. Alexander, Sr." You further explain that an unnamed third party listed you as President of SCI on SCI's 2015 Corporation Annual Report filed with Alabama Secretary of State, that you did not review this filing, that the State of Alabama reissued the incorrect report each year, and that you will ask that this report be corrected. We note that you are also listed as President of SCI on SCI's Alabama Secretary of State Corporation Annual Report filed for the years 2016 through 2020, <https://arc-sos.state.al.us/cgi/corpdetail.mbr/detail?corp=162116&page=name&file=&type=ALL&status=ALL&place=ALL&city=> (last visited June 28, 2021). We also note that according to the instructions for the Alabama Business Privilege Tax Return and Annual Report (Form CPT), an Alabama Secretary of State Corporation Annual Report (Schedule AL-CAR) is required to be included with any corporation's annual Alabama tax return and the information provided on that report is certified, under penalty of perjury, by an officer of the reporting corporation. Alabama Department of Revenue, Form CPT Instructions 2 (2021), <https://revenue.alabama.gov/wp-content/uploads/2021/01/21fcptinstr.pdf>. In addition, as reported to the Commission on SCI's most recent biennial broadcast ownership report, the only officers of SCI are yourself, your father, and your mother. *SCI Form 323*. We also note that, as of June 28, 2021, your publicly available personal profile on LinkedIn listed your current position as "President at Scott Communications, Inc." and indicates that you have been in this position since 2005. Paul Alexander, LINKEDIN, <https://www.linkedin.com/in/paul-alexander-75303931> (last visited June 28, 2021).

¹⁶ *Paul Alexander Form 175*, as amended June 11, 2021, New Entrant Eligibility. Because one of the SCI stations is in the "same area" as the permit that you selected on your short-form application, your attributable interest would have rendered you ineligible for the bidding credit that you had initially claimed, if you had qualified to bid. 47 CFR § 73.5007(a).

¹⁷ *Paul Alexander Form 175*, as amended June 16, 2021, Exhibit: Declaration of Paul S. Alexander, Jr.

¹⁸ *Id.*

the down payment deadline.¹⁹ An “applicant” for purposes of this rule includes the officers and directors of the entity submitting a short-form application.²⁰ A party that submits an application becomes an “applicant” under the rule at the application filing deadline, and that status does not change based on later developments, including failure to become a qualified bidder.²¹ Thus, both you and SCI remain applicants for purposes of this rule and remain subject to the prohibition on certain communications until the down payment deadline for winning bidders in Auction 109.

Pursuant to section 1.2105(c)(5)(i) of the Commission’s rules, for the purposes of the prohibited communications rule, you are an applicant both with respect to your own application and the application of SCI.²² Because you are considered to be the applicant in both instances, your bids and bidding strategies are necessarily conveyed to SCI and vice versa in apparent violation of the prohibited communications rule.²³ In addition, you have not provided us with any information that could allow us to conclude that your role at SCI does not put you in violation of the prohibited communications rule.

Rather the information provided in your resubmitted application indicates that you have significant managerial responsibility with regard to the operation of SCI’s broadcast stations and the ability to exert influence over SCI’s participation in Auction 109.²⁴ As such, even if you do not directly discuss bids and bidding strategies with other principals at SCI, you have necessarily conveyed bids and biddings strategies to SCI and vice versa through your position as an officer and your ability to influence SCI. Specifically, you identify yourself as the vice president of SCI. Generally, the duties of the vice president of a corporation include the duty to fill the role of the president in his or her absence and to act on behalf of the corporation. Fulfillment of such duties necessarily include having knowledge of the significant actions being taken by the company, including with regard to SCI’s participation in Auction 109, information related to SCI’s bids and bidding strategies. In addition, you describe your role at SCI as the sales manager and “the one to see to buy advertising.” Advertising sales are generally the primary or sole source of revenue for a broadcast station. Accordingly, your day-to-day responsibilities as the manager of advertising sales in connection with your officer position as the vice president of SCI, indicate

¹⁹ 47 CFR § 1.2105(c)(1); *see generally Auction 109 Procedures Public Notice* at 13-18, paras. 37-53.

²⁰ 47 CFR § 1.2105(c)(5)(i); *Auction 109 Procedures Public Notice* at 13, para. 38.

²¹ *Auction 109 Procedures Public Notice* at 13, para. 38 (citing *Star Wireless, LLC v. FCC*, 522 F.3d 469, 474-75 (D.C. Cir. 2008)).

²² 47 CFR § 1.2105(c)(5)(i).

²³ *See, e.g., Trinity Broadcasting Network*, Letter Order, 20 FCC Rcd 14648, 14648-49 (MB/WTB 2005) (finding apparent violation of communication prohibitions of section 1.2105(c) where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement, which under the rule then in effect, would have made an exception to the prohibition applicable).

²⁴ *See Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Memorandum Opinion & Order, 9 FCC Rcd 7684, 7687-88, para. 9 (1994) (defining “applicant” for the purposes of the prohibited communications rule to include the officers of the entity submitting the application on the basis that officers hold attributable interests in such entities under the then-applicable wireless spectrum aggregation rules); *Amendment of the Commission’s Rules to Establish New Personal Communication Services*, GEN Docket No. 90-314, Memorandum Opinion and Order, 9 FCC Rcd 4957, 5006, para. 120 (1994) (determining that the officers and directors of a wireless licensee in the personal communications services, or an entity controlling that licensee, have an attributable interest in that licensee due to “the ability of such individuals to exert influence over companies in which they have significant managerial responsibility.”); *see also*, 47 CFR 73.3555 note 2(g) (the media interests of a broadcast licensee are attributable to its officers, and a licensee may request that the Commission waive attribution only if such officer’s duties are wholly unrelated to the broadcast business).

that you have a significant role in, and influence over, the operation of the SCI's broadcast stations and would generally be aware of, if not actively involved in, SCI's plans with regard to participation in Auction 109.

Further, the internal controls that you indicate have been taken to safeguard against any prohibited communications are ineffective for an individual who is an "applicant" for purposes of the prohibited communication rule with regard to two short-form applications in the same auction. Your internal controls generally describe a firewall between yourself and other individuals at SCI. Because you are both SCI, for the purposes of the prohibited communications rule, and an individual applicant, however, the precautionary measure of a firewall is not available to you.²⁵ Your description of your internal controls tacitly acknowledges this fact when you state that you will not discuss bids or bidding strategies with *other* principals of SCI.²⁶

Because of this violation of the Commission's prohibited communications rule, you were found unqualified to participate in the bidding for Auction 109. Although our determination that you are not qualified to bid in Auction 109 relies entirely on your own statements made under penalty of perjury to the Commission, we note that there have been inconsistencies among your original application, statements in your amended application, and your public statements that bring into question whether you and SCI have been forthright in your filings with the Commission. We remind you that, under 47 CFR § 1.17, you are subject to a duty of candor in all submissions to the Commission.

Sincerely,

Gary D. Michaels
Deputy Chief
Auctions Division
Office of Economics and Analytics

Albert Shuldiner
Chief
Audio Division
Media Bureau

²⁵ See *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, WT Docket No. 12-269, Public Notice, 30 FCC Rcd 10794, 10800, para. 15 (WTB 2015) (noting that in the case of an individual, the precautionary measure of a firewall is not available.).

²⁶ See *Paul Alexander Form 175*, as amended June 16, 2021, Exhibit: Declaration of Paul S. Alexander, Jr.