

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Able Radio Corporation)	
)	
Application for a Construction Permit)	File No. BNPH-20070403ACO
For a New FM Broadcast Station at Aguila,)	Facility ID No. 170953
Arizona)	

MEMORANDUM OPINION AND ORDER

Adopted: April 23, 2014

Released: April 23, 2014

By the Commission:

1. In this Memorandum Opinion and Order, we deny the Application for Review filed by Entravision Holdings, LLC (“Entravision”) on January 7, 2013. Entravision seeks review of a December 7, 2012, action by the Media Bureau (“Bureau”),¹ which denied Entravision’s Petition for Reconsideration of the November 29, 2011, letter decision granting the above-captioned application (“Application”) of Able Radio Corporation (“Able”).²

2. Able was the winning bidder for a new commercial FM station in FM Auction 70. After timely filing its original post-auction long-form FCC Form 301 application, Able submitted several amendments. One such amendment, filed on May 5, 2008, specified a new transmitter site (the “May 2008 Site”). As it did below, Entravision argues that the Application should be dismissed because, having allegedly failed to obtain reasonable assurance of site availability for the May 2008 Site, Able is precluded from specifying a successor site to correct this deficiency. Entravision also claims that Able has failed to prosecute the Application. Auction winners, according to Entravision, should be treated the same as all other applicants with respect to these requirements because: (1) the Commission must treat similarly-situated applicants similarly; and (2) post-auction, auction winners are governed by the same statutory provisions as any other applicant.³

3. In the *Reconsideration Decision*, the Bureau rejected Entravision’s arguments and applied the Commission’s long-standing policy of liberally accepting minor amendments filed by broadcast auction winners to correct application deficiencies.⁴ As set out in the instructions to the FCC

¹ *Mark Lipp, Esq.*, Letter, 27 FCC Rcd 15190 (MB 2012) (“*Reconsideration Decision*”).

² *Able Radio Corporation*, Letter, 26 FCC Rcd 16161 (MB 2011). On July 11, 2013, Able applied for an involuntary assignment of the Station’s license to Rodney D. Tow, Trustee, stating that it had filed for Chapter 7 bankruptcy on May 22, 2013. File No. BAPH-20130711AAV, Exhibit 2. This involuntary assignment was consummated on December 9, 2013. For convenience, we refer to the Station licensee as “Able” herein.

³ See Application for Review at 1-3 (citing *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965) (establishing the basic proposition that the Commission must treat similarly-situated applicants similarly or explain the differential treatment); 47 U.S.C. §§ 309(j), 308(b), 310(d)).

⁴ See *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licenses*, First Report and Order, 13 FCC Rcd 15920, 15986 (1998) (subsequent history omitted) (establishing “a more lenient approach toward the processing of defective broadcast applications for new facilities and major changes, . . . permitting multiple corrective amendments, if necessary” due (continued....))

Form 301, *all* applicants for broadcast facilities, including, as here, auction winners, must have reasonable assurance of site availability when they file a Form 301.⁵ This case, however, does not involve a dispute about the availability of the site identified in the Form 301 at the time that form was filed. Rather, it centers on the availability of a different site identified in a post-auction amendment. Under these circumstances, we agree that the Bureau did not have to reach the issue of site availability with respect to the May 2008 Site because Able subsequently filed another amendment to specify a new, compliant site. As the Bureau explained in the *Reconsideration Decision*, the Commission permits such amendments in the auction context, thus “expressly and deliberately” treating auction winners dissimilarly to other, non-auction, applicants because “the competitive bidding process itself [lessens] the incentive for insincere application filings.”⁶ The Bureau also found that Able had adequately prosecuted the Application by filing amendments and responding to staff inquiries and requests for information, observing that where an applicant is incentivized to build promptly in order to recoup upfront auction expenses, the concern with spectrum speculation is “minimal.”⁷

4. Upon review of the Application for Review and the entire record, we conclude that Entravision has not demonstrated that the Bureau erred. The Bureau, in the *Reconsideration Decision*, properly decided the matters raised, and we uphold its decision for the reasons stated therein.

5. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 5(c)(5) of the Communications Act of 1934, as amended,⁸ and Section 1.115(g) of the Commission’s rules,⁹ the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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to the relatively small volume of winning bidder long-form applications, the relatively brief time period that winning bidders have to prepare and file their long-form applications following the close of an auction, and the incentive for auction winners to recoup their bid expenditures); *see also, e.g., David Oxenford, Esq.*, Letter, 28 FCC Rcd 6269, 6271 (MB 2012).

⁵ See Instructions for FCC Form 301, Section I.K, <http://transition.fcc.gov/Forms/Form301/301.pdf> (May 2012) (“All applicants for broadcast facilities must have a reasonable assurance that the specified site will be available at the time they file FCC Form 301.”).

⁶ *Reconsideration Decision*, 27 FCC Rcd at 15192-3.

⁷ See 1998 Biennial Regulatory Review—*Streamlining of Mass Media Applications, Rules, and Processes*, Report and Order, 13 FCC Rcd 23056, 23071 (1998) (subsequent history omitted).

⁸ 47 U.S.C. § 155(c)(5).

⁹ 47 C.F.R. § 1.115(g).