



Federal Communications Commission
Washington, D.C. 20554

July 8, 2005

DA 05-1918

Mr. Adrian Jones
General Manager
Glorious Communications Channel Broadcasting, LLC
4860 Chuck Avenue
Memphis, TN 38118

Re: Auction No. 81
Glorious Communications Channel Broadcasting, LLC
File No. BNPTTL-20000830BQJ
Request for Waiver of Deadline for Submission of FRN

Dear Mr. Jones:

This letter responds to your April 18, 2005 correspondence (sent via electronic mail) on behalf of Glorious Communications Channel Broadcasting, LLC ("Glorious") requesting a waiver of the deadline for submission of the FCC Registration Number (FRN) to participate in Auction No. 81. You ask the Federal Communications Commission ("Commission") to accept Glorious's FRN, even though you failed to submit it by the March 18, 2005 deadline.¹ You claim that various personal problems encountered by you, as Glorious's General Manager, prevented timely submission of Glorious's FRN. For the reasons set forth below, we deny your waiver request.

Pursuant to Section 1.3 of the Commission's rules, the Commission may waive this deadline "for good cause shown" by Glorious, the petitioner.² Our grant of a waiver is appropriate only if special circumstances warrant a deviation from the general rule, and if such deviation will serve the public interest.³ For this reason, an entity seeking waiver must plead with particularity the facts and circumstances which the petitioner argues would warrant the grant of a waiver.⁴ Specifically, a petitioner must demonstrate that, in view of unique or unusual circumstances, application of the requirement would be inequitable, unduly burdensome, or contrary to the public interest.⁵ In addition, a petitioner has the burden to show that the public interest would be served better by waiver than by strict application of the requirement.⁶

¹ The FRN submission deadline was announced in a public notice released by the Media and Wireless Telecommunications Bureaus on February 28, 2005. See "Applicants for Low Power Television Construction Permits to be Awarded in Auction No. 81 Must Submit Supplemental Information by March 18, 2005," *Public Notice*, DA 05-505 (Feb. 28, 2005) ("*FRN Public Notice*"). The *FRN Public Notice* described the procedures and provided instructions for submission of the Auction No. 81 applicant's FRN. See also Low Power Television Auction No. 81 Scheduled for September 14, 2005; Auction No. 81 Applicants Must Provide Supplemental Information by March 18, 2005; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, *Public Notice*, DA 05-506 (Feb. 28, 2005).

² 47 C.F.R. § 1.3. Section 1.3 provides in pertinent part: "The provisions of this chapter may be ... waived for good cause shown ... subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission ... on petition if good cause therefor is shown."

³ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

The *FRN Public Notice*, which was released on February 28, 2005, announced the FRN submission deadline of March 18, 2005.⁷ Auction No. 81 applicants were warned that failure to submit their FRN by the March 18, 2005 deadline would result in the dismissal of their engineering proposal(s) and their not being permitted to participate in the auction. Glorious does not claim a lack of notice of the March 18, 2005 FRN submission deadline.⁸ In fact, the waiver request appears to indicate that Glorious was aware of the deadline but that you, as the applicant's General Manager, were distracted by personal problems and failed to make the submission.⁹

You have not satisfied the Commission's criteria for granting a waiver of the FRN submission deadline. You have not shown that enforcing the deadline in this case would frustrate the purposes underlying this requirement, or would not serve them. The Bureaus set the deadline in order to obtain in a timely manner each Auction No. 81 applicant's FRN. It was necessary to establish a deadline so that applicants for Auction No. 81 would be able to access the electronic FCC Auction System and continue to participate in the auction process. The deadline was also necessary to provide the staff with sufficient time prior to the auction to aid in the transition of auction applications to the new Integrated Spectrum Auction System from the Commission's Automated Auction System, which was used when these auction applications were initially filed in 2000. By having an announced procedure which applies uniformly, we created a predictable and fair procedure for all applicants in Auction No. 81. Consistent application of the auction rules to all applicants is essential to a fair and efficient process, and is fair to all auction applicants.¹⁰

In addition, you have not demonstrated unique facts or circumstances that merit granting a waiver in this case. You have failed to provide any particular facts or other evidence that would demonstrate that you were incapacitated or otherwise prevented from timely submitting your FRN by the March 18, 2005 deadline. While you point to your various personal problems, you have not shown why you or Glorious were unable to obtain the assistance of a third party, such as another employee or contractor, to make the required FRN submission.¹¹

Accordingly, your request for a waiver of the FRN submission deadline for Auction No. 81 is denied. This action is taken under authority delegated pursuant to Sections 0.283 and 0.331 of the Commission's rules.¹²

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

⁷ *FRN Public Notice* at 1.

⁸ In this regard, we note that a copy of the *FRN Public Notice* was sent via certified mail to you because Glorious had designated you as its contact person in its auction application (FCC Form 175). Postal records indicate that the *FRN Public Notice* was received on March 10, 2005, and that the certified mail return receipt card was signed by you.

⁹ Glorious submitted its FRN (along with the instant waiver request) on April 18, 2005, which was 31 days after the submission deadline.

¹⁰ See, e.g., Application of Winstar Broadcasting Corp., *Order on Reconsideration*, 20 FCC Rcd 2043, 2053-54 ¶ 10 (2005).

¹¹ Although your waiver request describes slow healing and recovery after surgery on February 10, 2005, no specific events are related between the February 28 release of the *FRN Public Notice* and the March 17 fall by Mr. Jones, one day before the March 18 deadline.

¹² 47 C.F.R. §§ 0.283 and 0.331.