



Federal Communications Commission
Washington, D.C. 20554

March 21, 2006

DA 06-632
In Reply Refer to:
1800B3-SNC

Dennis J. Kelly, Esq.
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Re: AM Auction No. 84
KWFA(AM), Tye, Texas
Facility ID Number 40403
File Number BMAP-20040130AIG
Marlene V. Borman

Dear Counsel:

This letter is in response to the *Request for Expedited Action, or, in the Alternative, for Tolling of Construction Permit* that you filed on February 8, 2006, on behalf of Marlene V. Borman (Borman), permittee of AM broadcast station KWFA on 1030 kHz at Tye, Texas, and applicant for a major change in the KWFA facilities in AM Auction No. 84. Borman's AM Auction No. 84 application, BMAP-20040130AIG, is one of 15 mutually exclusive (MX) applications in AM Auction No. 84 MX Group 84-160, a "Category I" group.¹ Borman requests that the staff expedite its processing of this group or, alternatively, toll its outstanding construction permit for a new AM station in Tye, Texas, BP-19870303AG.

The public interest is best served by the orderly and efficient processing of the very high volume of applications filed in AM Auction No. 84. In all, 1,311 short-form applications were filed in the AM Auction No. 84 filing window, more than five times as many as were filed in the previous AM auction window. 1,123 of the 1,311 applications are eligible to participate in the auction. Of those deemed eligible, 321 are singleton applications and 802 are MX applications.

To expedite new and enhanced service to the public, the Media Bureau initially concentrated on singleton AM Auction No. 84 proposals. 229 of the 321 singleton applicants filed FCC Form 301 applications as directed. The Media Bureau has disposed of approximately 60 of the singleton applications to date. We anticipate completing our review of the singleton applications by May 30, 2006.

¹ Category I MX groups are MX AM application groups which include at least one AM major modification application or one noncommercial education application, and are therefore entitled to settle or otherwise resolve mutual exclusivities by means of engineering solutions. Category I applicants that do not resolve all conflicts with other MX auction applications will proceed to Section 307(b) analysis, and then to auction, if pertinent.

Once the processing of the singleton applications was well underway, the Media Bureau announced the AM Auction No. 84 MX applicants subject to auction and directed the applicants to file certain required documents by September 16, 2005.² This filing date was extended to October 31, 2005, due to Hurricane Katrina.³ The 802 MX AM Auction No. 84 applications comprise 170 MX groups. There are 77 groups of Category I MX applications, 89 groups of Category II MX applications,⁴ and 4 groups of Category III MX applications.⁵ Category I and Category II submissions were due on October 31, 2005. There were no additional filings required for Category III MX applicants. The staff has already begun processing the Section 307(b) showings filed by both Category I and Category II applicants, and the Bureau anticipates that it will *begin* reviewing the settlements and technical resolution singleton applications filed by Category I MX applicants on June 1, 2006.

Borman's AM Auction No. 84 application, BMAP-20040130AIG, proposes a major change in the authorized KWFA facilities (change in community of license from Tye, Texas, to Abilene, Texas, and modified technical facilities). At least six settlement agreements, several singleton applications to resolve technical conflicts, and numerous requests for application dismissals were filed by the 15 applicants in MX Group 84-160. Review of the settlement agreements, singleton applications, and application dismissals in MX Group 84-160 must be undertaken simultaneously in order for the staff to determine which singleton applications are grantable, which singleton applications create new MX situations, and which MX applications must proceed to auction. Moreover, the staff must confirm that the settlement requests conform to legal requirements. The 15-application MX Group 84-160 is indicative of the complexity of the technical and legal review involved in processing a Category I MX group. Taking this group out of the processing queue would needlessly disrupt the staff's overall processing scheme. Unquestionably, applicants in other Category I groups can make equally persuasive arguments for "me first" treatment. The attempt to evaluate such requests can only delay the completion of this major licensing project. Accordingly, your *Request for Expedited Action* on the applications in AM Auction No. 84 MX Group 84-160 **IS DENIED**.

Since expedited action on the AM Auction No. 84 MX Group 84-160 applications is herein denied, we also consider your alternative request that the KWFA construction permit, BP-19870303AG, be tolled until the Commission acts on modification application BMAP-20040130AIG. You argue that the length of time the mutually exclusive group has been pending is a matter beyond the station's control. The station's circumstances qualify neither for tolling under Section 73.3598(b) of the Commission's rules nor for a waiver of the three-year construction period. The Commission will not grant additional time for a permittee to move from its original FCC-approved site when the permittee has not

² See "AM Auction No. 84 Mutually Exclusive Applicants Subject to Auction; Settlement Period Announced for Certain Mutually Exclusive Application Groups; September 16, 2005 Deadline Established for Section 307(b) Submissions," *Public Notice*, 20 FCC Rcd 10563 (2005).

³ See "Auction No. 84 Settlement Period and Section 307(b) Submission Deadline Extended to October 31, 2005," *Public Notice*, 20 FCC Rcd 14492 (2005).

⁴ Category II MX groups are MX application groups which are ineligible for settlement and/or technical resolution, but for which a Section 307(b) showing must be filed by each applicant. If the Section 307(b) determination for a group is not dispositive, the MX application group will proceed to auction.

⁵ Category III MX groups are MX application groups which are ineligible for settlement and/or technical resolution, and no Section 307(b) showing is required. These MX application groups will proceed directly to auction.

demonstrated that the site became "unavailable for reasons not attributable to the permittee."⁶ Additional time is not warranted where, as here, the site change is based on the permittee's voluntary business decision to change sites and community of license.⁷ Accordingly, your tolling request **IS DENIED**.

Sincerely,

Susan N. Crawford
Assistant Chief
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⁶ See *Streamlining MO&O*, 14 FCC Rcd 17525, 17541, n.56 (1999) (no tolling for voluntary site changes even for LPTV and DTV permits which, due to circumstances unique to those services, sometimes qualify for tolling not applicable to radio permits).

⁷ See *Texas Grace Communications*, 16 FCC Rcd 19167 (2001).