



Federal Communications Commission
Washington, D.C. 20554

April 17, 2019

DA 19-272

Marissa G. Repp
Counsel for iHeartMedia, Inc.
1629 K Street NW, Suite 300
Washington, DC 20006-1631

Re: Request of Auction 100 Applicants Capstar TX, LLC, CC Licenses, LLC, and
Citicasters Licenses, Inc. for Waiver of Section 1.2105(c) of the Commission's Rules

Dear Ms. Repp:

In this letter, the Auctions Division of the Office of Economics and Analytics, in conjunction with the Audio Division of the Media Bureau,¹ waives *nunc pro tunc* as of the Auction 100 short-form application filing deadline section 1.2105(c) of the Commission's rules with respect to communications between Capstar TX, LLC, CC Licenses, LLC, and Citicasters Licenses, Inc., three commonly owned applicants for new cross-service FM translators in Auction 100.² Each of these Auction 100 applicants is an indirectly owned subsidiary of iHeartMedia, Inc. (iHeart).³ For the reasons set forth below, subject to the applicants' compliance with all other regulations, terms and requirements for participation in Auction 100, we grant the applicants' request for waiver of section 1.2105(c) with respect to communications between them so that they may participate in Auction 100 as separate applicants under common control.⁴

Background. The Commission decided in its AM Revitalization proceeding to conduct two auction filing windows in which a licensee or permittee of an AM broadcast station could apply for a construction permit for a new cross-service FM translator to retransmit its AM station signal full time.⁵ Mutually exclusive engineering proposals filed during the second auction window will be resolved through competitive bidding in Auction 100.⁶

As we recognized previously, the Commission established eligibility requirements for cross-service FM translators that might make it difficult for an applicant in certain circumstances to comply with the Commission's competitive bidding rules as amended in 2015.⁷ These eligibility requirements

¹ See 47 CFR §§ 0.21(n), 0.61, 0.283; see also *id.* § 0.21(m).

² See 47 CFR § 1.2105(c).

³ See Auction 100 FCC Forms 175 of Capstar TX, LLC (File No. 0008081975), CC Licenses, LLC (File No. 0008081878) and Citicasters Licenses, Inc. (File No. 0008081877).

⁴ See Letter from Marissa G. Repp, Counsel for iHeartMedia, Inc. (submitted Dec. 7, 2018) (iHeart Waiver Request). This letter is available in AU Docket No. 17-329 in the FCC's Electronic Comment Filing System.

⁵ See *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145, 12150-51, para. 12 (2015) (*AM Revitalization Order*).

⁶ *Auction of Cross-Service FM Translator Construction Permits; Comment Sought on Competitive Bidding Procedures for Auction 100*, Public Notice, 33 FCC Rcd 9984 (WTB/MB 2018) (*Auction 100 Comment Public Notice*). Attachment A of this public notice lists the Auction 100 applicants with engineering proposals remaining subject to competitive bidding, including these three iHeart applicants.

⁷ See *Filing Instructions for Second Cross-Service FM Translator Auction Filing Window for AM Broadcasters (Auction 100) to be Open January 25-January 31, 2018; Freeze on FM Translator and Low-Power FM Station*

provide that only existing licensees and permittees of AM broadcast stations could apply for a cross-service FM translator to provide fill-in service within that AM primary station's service contour and each AM station could apply for only one translator.⁸ If multiple eligible AM station licensees were jointly owned, however, each of them could not apply for this auction without violating section 1.2105(a)(3) of the Commission's rules, which bars a party from having control of more than one applicant in a Commission auction.⁹ Accordingly, when announcing details and filing instructions for the Auction 100 filing window, section 1.2105(a)(3) was waived for those Auction 100 applicants under common control.¹⁰

In the context of the Commission's first cross-service FM translator auction (Auction 99),¹¹ we recognized that those applicants under common control that filed separate short-form applications (FCC Forms 175) pursuant to the waiver of 1.2105(a)(3) would be at risk of violating section 1.2105(c)'s prohibition on communication of bidding information between auction applicants because the Commission presumes that bid amounts and bidding strategies are communicated between entities that share a common officer or director or common ownership and control.¹² Accordingly, the *Auction 100 Comment Public Notice* sought comment on whether it would be appropriate to waive or modify the application of section 1.2105 provisions discussed above so that commonly controlled Auction 100 applicants relying on the waiver of section 1.2105(a)(3) will not thereby violate such other provisions.¹³ In response, iHeart, on behalf of three indirectly owned subsidiaries, requested waiver of section 1.2105(c) to allow its subsidiaries to continue to participate in Auction 100 and engage in communications among themselves.¹⁴

Discussion. We may waive rule provisions for good cause shown by the petitioner.¹⁵ A party seeking waiver of a rule's requirements must demonstrate that special circumstances warrant a deviation from the general rule and that such deviation will serve the public interest.¹⁶

Minor Change Applications and FM Booster Applications January 18-January 31, 2018, Public Notice, 32 FCC Rcd 10173 (MB/WTB 2017) (*Auction 100 Filing Instructions Public Notice*). See also *Updating Part 1 Competitive Bidding Rules*, Report and Order, Order on Reconsideration of the First Report and Order, Third Order on Reconsideration of the Second Report and Order, Third Report and Order, 30 FCC Rcd 7493 (2015).

⁸ *AM Revitalization Order*, 30 FCC Rcd at 12153-54, para. 17.

⁹ See 47 CFR § 1.2105(a)(3).

¹⁰ *Auction 100 Filing Instructions Public Notice*, 32 FCC Rcd at 10177-78, para. 17.

¹¹ See *Request of Auction 99 Applicants J.J.&B. Broadcasting, Inc. & Macon Media, Inc. for Waiver of Section 1.2105*, Letter Order, 33 FCC Rcd 4509 (MB/WTB 2018) (*Limited Waiver of Section 1.2105*).

¹² See 47 CFR § 1.2105(c)(5)(i).

¹³ *Auction 100 Comment Public Notice* at paras. 8-14.

¹⁴ See iHeart Waiver Request.

¹⁵ 47 CFR § 1.3. This waiver standard and the waiver standard applied in the context of wireless radio service licenses, 47 CFR § 1.925, have been found to be substantially the same. See *Delta Radio, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 16889, 16891, para. 7 & n.19 (2003) (citing *BellSouth Corp. v. FCC*, 162 F.3d 1215, 1225 n.10 (D.C. Cir. 1999)).

¹⁶ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). Accord, e.g., *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008). See also 47 CFR § 1.925(a)(3).

We grant a limited waiver to iHeart's subsidiaries, Capstar TX, LLC, CC Licenses, LLC, and Citicasters Licenses Inc., to provide an exception from the prohibition of communication imposed by section 1.2105(c) to allow these three applicants to participate in Auction 100 through separate auction applications, subject to meeting all other regulations, terms and requirements for participation in this auction. Grant of this waiver is consistent with our prior recognition of the special circumstances of the Auction 100 filing window,¹⁷ including the specific eligibility requirements adopted by the Commission in the AM Revitalization proceeding.¹⁸ Moreover, waiving section 1.2105(c)'s prohibition to the limited extent so that these three commonly controlled applicants may participate in Auction 100 while necessarily sharing bidding information by virtue of having common ownership and control will give effect to the prior waiver of section 1.2105(a)(3).¹⁹ As outlined in the *Auction 100 Comment Public Notice*, we believe that in this regard the circumstances of Auction 100 are no different than those of Auction 99, the first cross-service FM translator auction, where we granted a limited waiver of the prohibition on communications to certain similarly-situated applicants that were commonly owned.²⁰

Conclusion. For the foregoing reasons, the waiver request filed by iHeartMedia, Inc., on behalf of its three indirectly owned subsidiaries, Capstar TX, LLC, CC Licenses, LLC, and Citicasters Licenses Inc., IS GRANTED *nunc pro tunc* as of the January 31, 2018, short-form application filing deadline, to the extent set forth above.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

Margaret W. Wiener
Chief, Auctions Division
Office of Economics and Analytics

¹⁷ *Auction 100 Filing Instructions Public Notice*, 32 FCC Rcd at 10177-78, para. 17.

¹⁸ *See AM Radio Revitalization Order*, 30 FCC Rcd at 12153-54, para. 17.

¹⁹ *See Limited Waiver of Section 1.2105*, 33 FCC Rcd at 4509.

²⁰ *See id.*