



PUBLIC NOTICE

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MEDIA BUREAU ANNOUNCES AVAILABILITY OF CONSTRUCTION DEADLINE WAIVERS FOR CERTAIN FM TRANSLATOR STATIONS AWARDED IN AUCTIONS 99 AND 100

MB Docket No. 13-249

The Media Bureau announces that it will accept COVID-19-related requests for waiver of the expiration date for Auction 99- or 100-awarded construction permits due to expire on or before June 30, 2021. Any such waiver request must specify how the COVID-19 pandemic or the economic impact of the pandemic has prevented timely construction. The Media Bureau will allow a permittee, on an individual basis and on a showing of circumstances specific to it, to seek up to a six-month waiver of the construction deadline.

Beginning in July 2017, the Commission opened two filing windows for AM broadcast stations seeking new FM translator stations to rebroadcast their AM signals on a fill-in basis.¹ These filing windows, designated Auctions 99 and 100, were ordered by the Commission in the First Report and Order in the *Revitalization of the AM Radio Service* proceeding.² The Auction 99 and 100 windows led to the award of over 1,700 construction permits for new cross-service FM translators.

The Media Bureau is aware that shutdowns associated with the pandemic have forced stations to halt construction, have disrupted equipment availability and deliveries, and have interrupted travel for tower and equipment installers. In addition, the pandemic has compounded the severe financial difficulties experienced by many AM stations, including the significant loss of advertising revenue due to economic disruptions and the need to cover breaking news and air public service announcements relating to the pandemic. These financial difficulties, in some cases, may have caused AM stations to delay construction of authorized cross-service translators.

In the Notice of Proposed Rule Making in the *AM Revitalization* proceeding, the Commission emphasized the unique role of AM radio and the vital programming such stations provide to their local communities.³ Recognizing the importance of AM broadcast programming to local communities, as well

¹ See *FCC Announces Opening of First Auction Filing Window for AM Broadcasters Seeking New FM Translators*, Public Notice, 32 FCC Rcd 5159 (2017); *Filing Instructions for Second Cross-Service FM Translator Auction Filing Window for AM Broadcasters (Auction 100) to Be Open January 25 – January 31, 2018*, Public Notice, 32 FCC Rcd 10173 (MB/WTB 2017).

² *Revitalization of the AM Radio Service*, MB Docket No. 13-249, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145, 12151, 12153-54, para. 12, 17 (2015).

³ *Revitalization of the AM Radio Service*, MB Docket No. 13-249, Notice of Proposed Rule Making, 28 FCC Rcd 15221, 15222, para. 3 (2013).

as the fact that FM cross-service translators allow AM broadcasters to provide higher-quality service to their communities, and mindful of the financial challenges facing some AM stations, the Media Bureau finds that the public interest will be served by enabling AM broadcasters with construction permits for Auction 99 and 100 translator stations to complete construction of those translators. While our rules do not provide for extensions of construction permits, we will in appropriate cases grant a waiver of the construction deadline based on “rare and exceptional circumstances beyond the permittee’s control.”⁴ The Bureau finds that, to the extent the COVID-19 pandemic has hindered the ability of an applicant to construct its translator facilities, those specific difficulties would constitute such a rare and exceptional circumstance beyond the permittee’s control.

Any Auction 99 or 100 permittee seeking a waiver of its construction deadline due to the COVID-19 pandemic should submit a waiver request detailing its circumstances no later than 15 days prior to the construction permit’s expiration date, and may request a deadline extension of no more than six months. Waiver requests must be in the form of a letter submitted by e-mail addressed either to Robert Gates (Robert.Gates@fcc.gov) or Larry Hannif-Ali (Larry.Hannif-Ali@fcc.gov) of the Media Bureau, Audio Division. Waiver requests should **not** be submitted through the Licensing and Management System (LMS), and do not require a filing fee.

The Media Bureau emphasizes that, due to the unique nature of cross-service translators and their ability to enhance vital AM service to local communities, as well as the extreme financial hardships experienced during the pandemic by AM broadcast stations, the public interest finding expressed in this Public Notice is specific to construction permits awarded to applicants in the Auction 99 and Auction 100 filing windows expiring on or prior to June 30, 2021, as we reasonably anticipate that the effects of the pandemic will extend into the first half of 2021. While other applicants and permittees are free as always to seek waiver relief, our public interest finding does not specifically pertain to other construction permits, applications, or services. The Bureau reiterates that to receive a waiver of the construction deadline, the permittee must make the appropriate showing under *Northeast Cellular* and *WAIT Radio*,⁵ including a specific showing of the impact of the pandemic on the permittee. This showing may include such evidence as financial statements demonstrating the pandemic’s economic impact on the individual permittee; affidavits or other evidence of the unavailability of components or tower crews; or copies of equipment orders.

For additional information, contact James Bradshaw, James.Bradshaw@fcc.gov, Robert Gates, Robert.Gates@fcc.gov, or Larry Hannif-Ali, Larry.Hannif-Ali@fcc.gov, of the Media Bureau, Audio Division, (202) 418-2700. Press inquiries should be directed to Janice Wise, (202) 418-8165.

By the Chief, Media Bureau

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⁴ See *1998 Biennial Regulatory Review—Streamlining of Mass Media Application Rules and Processes*, Report and Order, 13 FCC Rcd 23056 (1998), *recon. granted in part and denied in part*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17541 (1999). Good cause to waive a rule may be found and a waiver granted “where particular facts would make strict compliance inconsistent with the public interest.” *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *ICO Global Commc’ns (Holdings) Ltd. v. FCC*, 428 F.3d 264, 269 (D.C. Cir. 2005) (quoting *Northeast Cellular*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) (*WAIT Radio*). To make this public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule. See, e.g., *Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1157.

⁵ See *Northeast Cellular* and *WAIT Radio*, *id.*