



Federal Communications Commission
Washington, D.C. 20554

February 24, 2022

Mr. Ben Downs
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In re: **Bryan Broadcasting License
Corporation**
FM Translator Station K233DU,
College Station, Texas
Facility ID No. 202365
File No. BLFT-20190801AAQ

Request for Waiver or STA

Dear Licensee and Counsel:

We have before us a Request for Short Duration Waiver of section 74.1231 or Limited STA that Bryan Broadcasting Corporation¹ filed on February 17, 2022 (Waiver Request). The Waiver Request seeks authorization for Bryan to originate programming on translator station K233DU, Bryan, Texas for three hours on March 1, 2022. Bryan states that grant of this request will further the public interest by allowing Bryan to broadcast both the State of the Union address and the results of the 2022 Texas Republican and Democratic primaries. For the reasons set out below, we deny Bryan's request.

Bryan also owns AM station WTAW, Bryan, Texas and may only use K233DU to rebroadcast WTAW's programming. Bryan asserts that as the only radio stations in the Bryan/College Station community with an active news department, listeners will turn to WTAW and K233DU for important news stories, such as the State of the Union address or primary results.² Bryan seeks a waiver of section 74.1231 of the Commission's rules,³ which prohibits a translator station from originating programming, to

¹ Bryan Broadcasting Corporation and Bryan Broadcasting License Corporation are jointly referred to as Bryan.

² Waiver Request at 2.

³ 47 CFR § 74.1231.

allow WTAW and K233DU to broadcast different programming during the three hours that Bryan estimates will include the President's address as well as commentary before and afterward.⁴

The Commission's rules may be waived only for good cause shown.⁵ An applicant seeking a rule waiver has the burden to plead with particularity the facts and circumstances that warrant such action.⁶ The Commission must give waiver requests "a hard look," but an applicant for waiver "faces a high hurdle even at the starting gate"⁷ and must support its waiver request with a compelling showing.⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ However, waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.¹¹ We find Bryan has not satisfied these requirements.

The Commission has strictly applied section 74.1231 and its prohibition on translator stations originating program.¹² Bryan provides no authority to support its Waiver Request nor does it cite any examples of the Commission waiving section 74.1231 for breaking news events or otherwise. Although we acknowledge that there is a strong public interest in both the State of the Union address and coverage of the Texas primary results, two newsworthy events occurring on the same day are not a special circumstance. The decision of how to allocate coverage time among major events is a daily business decision made by licensees. Moreover, Bryan itself acknowledges there are other stations in the Bryan/College Station market that could provide coverage of one of those events.¹³ Bryan's website lists eight stations that Bryan operates in that market.¹⁴ We are confident that Bryan could direct its listeners to one of those stations as an alternate source of news during the time period in question. Additionally, we disagree that waiving section 74.1231 would be in the public interest because doing so would effectively undermine the rule. The Commission has long held that translator stations are a secondary

⁴ Waiver Request at 2.

⁵ 47 CFR § 1.3.

⁶ See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

⁷ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972) (*WAIT Radio*). See also *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

⁸ *Greater Media Radio Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 7090 (1999) (citing *Stoner Broadcasting System, Inc.*, Memorandum Opinion and Order, 49 FCC 2d 1011, 1012 (1974)).

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁰ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹¹ *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008) (*NetworkIP*) (waiver of filing deadline after counsel failed to timely remit the correct filing fee was arbitrary and capricious); *Northeast Cellular*, 897 F.2d at 1166.

¹² See, e.g., *Gerard A. Turro*, Order, 2 FCC Rcd 6674 (1987), *aff'd Turro v. FCC*, 859 F.2d 1498 (D.C. Cir. 1988) (*Turro*) (denying waiver of section 74.1231).

¹³ Waiver Request at 2 ("While it might be possible to carry one event or the other on some other local station. . .").

¹⁴ <https://bryanbroadcasting.com/what-we-do/> (last visited Feb. 22, 2022).

service that can only rebroadcast their primary station. As the D.C. Circuit noted in *Turro*, the Commission has held that a waiver of the prohibition on translator stations originating programming would “lead to a large number of similar requests, effectively undermining the rule.”¹⁵ Grant of the Waiver Request here would likewise undermine section 74.1231 and burden the staff with similar such requests.

Accordingly, it is ordered that the Request for Short Duration Waiver of section 74.1231 or Limited STA that Bryan Broadcasting Corporation filed on February 17, 2022, **IS DENIED**

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau

¹⁵ *Turro*, 859 F.2d at 1499.