

Request for Waiver of License Filing Requirements

EICB-TV East, LLC (“EICB”), permittee of K23NB-D, Boise, ID (Fac ID 181975) (the “Station”) hereby requests, pursuant to Section 1.3 of the Commission’s Rules, reinstatement of the Station’s construction permit and a waiver of those portions of Section 73.3598 of the Commission’s Rules that require the filing of a license to cover application prior to the expiration date of a construction permit and provide for the automatic forfeiture of the permit if such an application is not timely filed. As shown below, the requested relief is fully warranted.

EICB completed construction of the digital facilities for the Station in accordance with the construction permit granted by the Commission in File No. 0000151410 (the “CP”) and filed an application for a license to cover construction in the Commission’s Licensing and Management file system on July 9, 2021. See File No. 0000152192. At that point, EICB commenced operation of the Station’s new digital facilities assuming that such operation was permitted under program test authority.¹ EICB further assumed that the requirement of Section 73.3598 of the Commission’s Rules to file the license application by the July 13, 2021, expiration date of the construction permit also had been satisfied. However, due to an administrative oversight, EICB failed to pay the filing fee for the license application and on July 31, 2021 the application was dismissed. EICB attempted to rectify this error through a new license application filed on November 1, 2021, but the Commission dismissed that application because the CP had expired.

Because EICB completed construction of the Station’s digital facilities in accordance with the construction permit and filed an application for a license to cover prior to the construction permit expiration date, the only matter at issue is that EICB inadvertently failed to pay the application filing fee. Under Section 1.1118(a) of the Commission’s Rules, an application submitted with a defective fee submission shall be dismissed and may be corrected by resubmitting the application together with the entire correct fee.² Because the application was dismissed after the CP had expired, however, the Commission must waive the applicable time limits that would otherwise preclude EICB from rectifying this merely administrative error. The FCC will grant a waiver of its rules for good cause.³ Indeed, the Commission has, on numerous occasions, granted a license application where facilities were built prior to the construction deadline but the license application was filed after the permit expiration date.⁴

The automatic forfeiture provision was adopted to be sparingly used for a “singular and narrow purpose” – to conserve staff resources that were previously devoted to the task of cancelling expired

¹ See 47 C.F.R. 74.14.

² 47 C.F.R. § 1.1118(a).

³ 47 C.F.R. § 1.3.

⁴ See, e.g., Application of KAZT, LLC, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, File No. 0000163742 (Nov. 5, 2021) (granting petition to reinstate permit upon conclusion of forfeiture proceeding); *Clear Channel Broadcasting Licenses, Inc.*, 26 FCC Rcd. 7153 (2011) (affirming staff’s sua sponte waiver of Section 73.3598(e) and acceptance of license application filed late where the facilities authorized in the construction permit were built before the expiration of the permit); *Letter to Richard F. Swift, et al. (KXFT-FM, Manson, Iowa)*, 24 FCC Rcd. 13483 (2009) (granting waiver where station construction was complete before expiration of the construction permit application and application for license to cover was filed after the permit expired); *WRFN-LP, Pasquo, Tennessee*, 24 FCC Rcd. 12426 (2009) (waiving the Commission’s Rules to permit the late filing of the Application with no monetary penalty).

permits and notifying the former permittees.⁵ Granting waivers for good cause is within the Media Bureau's delegated authority⁶ and the Commission has followed "long-standing precedent which establishes that unintended consequences of a Rule are a significant factor favoring a Rule waiver."⁷ The Commission has also stated that the "automatic forfeiture of the authorization of an operating station is a severe penalty which the Commission has been reluctant to impose absent an egregious violation of its Rules."⁸

EICB takes seriously its obligations to comply with Commission Rules and attempted to do so here. Upon discovering that it had inadvertently failed to timely pay the filing fee, EICB immediately filed a new application and paid the fee. It would work a substantial hardship on EICB, and upon those communities and viewers the Station serves, were the Bureau to decline to grant the relief requested hereby.

When taking into account the inequities that would result from the even a temporary loss of the Station's signal due to an inadvertent and purely administrative failure to submit the filing fee for an application EICB otherwise timely filed, the harm to the public interest which would result from the Station being forced to go dark, and the Commission's treatment of similarly situated parties in the past, it is clear that good cause exists for grant of this waiver.

For the foregoing reasons, EICB respectfully requests that the Commission reinstate the CP, waive those portions of Section 73.3598 of the Commission's Rules that require the filing of a license to cover application prior to the expiration date of a construction permit and provide for the forfeiture of a construction permit where such application is not timely filed, and grant the pending license application. Such action would conform with Commission precedent and would strongly serve the public interest.

⁵ *WRKH(FM), Mobile Alabama*, 23 FCC Rcd. 4526 (2008).

⁶ 47 C.F.R. §§ 0.201, 0.283; *see also* 47 C.F.R. § 1.3.

⁷ *See supra*, n. 5.

⁸ *See id.* at n. 37 (*citing WAIT Radio v. FCC*, 418 F2d 1153 (D.C. Cir. 1969)); *see, e.g., Mt. Baker Broadcasting Co.*, 3 FCC Rcd. 4777 (1988) (forfeiture, rather than enforcement action, deemed appropriate when permittee implemented facilities that did not conform with its construction permit; willfully misrepresented material facts in permittee's request for construction permit extension; and failed to comply with Commission's Order to file a license application within 10 days.).