

REQUEST FOR ACCEPTANCE OF LATE-FILED APPLICATION & RULE WAIVER

The licensee, North Texas Public Broadcasting, Inc. (“NTPB”), respectfully requests that the Commission accept this application for license to cover the construction permit associated with TV Translator K26NK-D located in Wichita Falls, Texas (“Translator”) (File No. 0000055164, the “CP”). This CP was not a planned construction, but rather was obtained following vandalism that disrupted the Translator’s operations and forced NTPB to incur the expense to relocate the Translator’s antenna.

NTPB is a not-for profit 501(c)(3) educational organizational, and the parent of KERA, a community-supported media organization that provides noncommercial educational TV and radio programming and is the PBS member station in North Texas and beyond. The Translator rebroadcasts PBS member KERA-TV in the Wichita Falls, Texas area. NTPB respectfully seeks a waiver, pursuant to Section 1.925 of the Commission’s rules,¹ of the requirement to file the license to cover within 10 days after operations began,² and asks the Commission to accept this application notwithstanding that it is being filed more than 10 days after the Translator began operating under the CP.

On December 18, 2020, a broadcast tower in Wichita Falls, Texas that held the Translator’s LP television antenna was vandalized and fell. The damage to the antenna disrupted operations, and the Translator was forced to go off the air. On January 6, 2021, NTPB submitted a notification that the Translator suspended operations and requested an STA for the Translator to operate at a proposed temporary site.³ Separately, the Commission granted NTPB an STA so the Translator could continue to remain silent while it prepared the temporary site.⁴ The Translator resumed operations on April 21, 2021 pursuant to the STA, as demonstrated by the evidence submitted with this amendment and described in Attachment 1. Subsequently, on May 6, 2021, the Commission granted NTPB’s minor modification application to permanently relocate the Translator to the new site.⁵ The Translator has been operating pursuant to the facilities set forth initially in the STA and ultimately in the CP since NTPB resumed the Translator’s operations on April 21, 2021.

The CP associated with the minor modification grant and this license to cover application expires on May 6, 2024. NTPB completed its relocation and submitted this license to cover application prior to expiration of the CP. However, due to administrative oversight, an application for license to cover the CP was not filed within 10 days of beginning operations.

The Commission may grant a waiver if it is shown that the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of

¹ 47 C.F.R. § 1.925.

² See 47 C.F.R. § 73.1620(a)(1) (permittee of a nondirectional TV “may begin program tests upon notification to the FCC . . . provided that within 10 days thereafter, and application for a license is filed with the FCC”).

³ LMS File No. 0000139569 and Engineering STA.

⁴ LMS File No. 0000131217.

⁵ LMS File No. 0000144493 (granting CP File No. 0000055164).

the requested waiver would be in the public interest.⁶ In considering a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁷ Such a waiver is appropriate if the specific circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁸

According to the Media Bureau, “[p]roviding relief in instances where a licensee has failed to file an application for license to cover, but clearly completed construction prior to its authorized facility prior to the construction expiration date is consistent with Commission precedent.”⁹ In *Southwest Colorado TV Translator Assoc.*, the Bureau granted a waiver of a late filed license to cover, finding that the “Translator was previously a licensed analog facility and required by Commission rule to convert to digital operations. Not only did the Translator complete construction prior to its construction deadline, but according to Commission records the Translator has been continuously operational. Strict compliance with the rule would result in a loss of service to the public and be inconsistent with the public interest.”¹⁰

Similarly, in *Clear Channel Broadcasting Licenses*, the Commission upheld as proper the Bureau’s practice of processing a late-filed covering license application for facilities fully completed by the construction deadline through the waiver process.¹¹ The Commission stated, “we affirm the staff’s practice of waiving . . . the Rules in situations where the applicant conclusively demonstrates that it completed construction prior to the expiration of the construction period, notwithstanding the tardy filing of the license to cover application.”¹²

As discussed above, NTPB is a not-for profit 501(c)(3) educational organizational and the PBS member station for North Texas and beyond. This CP was not a planned modification, but rather was obtained following vandalism that disrupted the Translator’s operations and forced NTPB to incur the expense to relocate the Translator’s antenna. As a digital television translator, the Translator is “providing a secondary service” and is “not originating programming, but instead providing important ‘fill-in’ service to areas that otherwise may be unable to receive over-the-air television signals.”¹³ Moreover, as a nonprofit entity and PBS

⁶ 47 C.F.R. § 1.925(b)(3).

⁷ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁸ *Northeast Cellular*, 897 F.2d at 1166.

⁹ *Southwest Colorado TV Translator Association*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 21-1616 at ¶ 6 n. 17 (rel. Dec. 21, 2021) (“*Southwest Colorado TV Translator Assoc.*”) (citing *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, ¶ 11 (2011) and *Cranesville Block Company, Inc.*, Letter Order, 27 FCC Rcd 2018, 2019-20 (MB 2012)).

¹⁰ *Southwest Colorado TV Translator Assoc.* ¶ 6 n. 17.

¹¹ *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 7153, 7157, ¶ 11 (2011).

¹² *Id.*

¹³ See *Elko Television Distr.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 23-312, ¶ 6 (MB rel. Apr. 11, 2023) (citing, e.g., *Nichols Broadcasting Group, LLC, Notice of Apparent Liability for Forfeiture*, 36 FCC Rcd 8978 (Vid. Div. 2021) (paid Jun. 10, 2021) (all reducing fine for a late renewal application to \$1,500 because the stations “provid[e] a secondary service.”); *Digital Low Power Television, Television Translator, and Television Booster Stations and Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19333, paras. 2-6 (2004) (“The low power television service consists of LPTV, TV translator, and television

station, NTPB has limited revenues that are obtained primarily from viewer contributions, community service grants, and underwriting. As described in Attachment 1 and included in this application, NTPB is providing its audited financial statements for 2021, 2022, and 2023.¹⁴ The Consolidated Statement of Activities by Broadcast Entity on the last page of each financial statement shows that NTPB's operating expenses have exceeded revenues for the last three years. This documentation shows the licensee's inability to pay additional expenses, such as a potential forfeiture, and that it would cause financial hardship to the licensee. NTPB requests that the Commission take into account these factors to the extent any forfeiture is assessed and reduce it accordingly.¹⁵

Grant of this waiver is consistent with Commission precedent and "strict compliance with the rule would result in loss of service to the public and be inconsistent with the public interest."¹⁶ As discussed above and as confirmed by the evidence included herewith, NTPB timely implemented the facilities authorized in its CP and filed this application before the CP's expiration date, but failed to file within 10 days of operations due to administrative oversight. The Translator has been providing important fill-in service operating pursuant to the authority granted in the CP and without causing any interference or harm. Further, grant of this request is in the public interest because it would permit the Translator to continue broadcasting noncommercial educational programming to its viewers in Wichita Falls, Texas. Accordingly, based on the foregoing, NTPB requests that the Commission grant this waiver request and accept this application for license to cover.

booster stations....Stations in the low power television service are authorized with 'secondary' frequency use status.")).

¹⁴ Also available at <https://www.kera.org/about/reports/>. The Commission will consider reducing or canceling a forfeiture in response to a claim of inability to pay where the respondent submits: "(1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ('GAAP'); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status." *Christian Broadcasting of Yakima*, Forfeiture Order, 21 FCC Rcd. 3823, 3828 ¶ 11 (MD 2016).

¹⁵ See *Christian Broadcasting of Yakima*, Forfeiture Order, 21 FCC Rcd. 3823, 3828 ¶ 11 (MD 2016) (reducing forfeiture amount of \$12,000 to \$3,000 where the licensee "demonstrated through submission of financial documentation that the proposed forfeiture amount would cause financial hardship to the station").

¹⁶ See *Southwest Colorado TV Translator Assoc.* ¶ 6 n. 17.