



Federal Communications Commission
Washington, D.C. 20554

June 28, 2017

Mr. Marke Boelke
Entravision Holdings, LLC
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Re: Request for Waiver of Initial
Construction Permit Filing Deadline
KCEC(TV), Denver, Colorado
Facility ID No. 24514
LMS File No. 00000024866

Dear Licensee,

On June 12, 2017, Entravision Holdings, LLC (Entravision) submitted the above-captioned request for waiver of the July 12, 2017, 90-day post-incentive auction construction permit and cost estimate filing deadline for full power television station KCEC(TV), Denver, Colorado (KCEC or Station), asserting that the Station is "unable to construct" the specified facilities assigned to it in the *Closing and Channel Reassignment Public Notice*¹ due to land mobile (LM) interference and other related technical reasons, as well as a potential inability to obtain the necessary approvals to construct the facility at its current site. Entravision also seeks permission to file an application for construction permit during the first priority alternate channel/expanded facilities filing window (first priority window). For the reasons below, we grant the request for waiver and Entravision is permitted to file an application for construction permit for KCEC during the first priority window.

Background. The Commission instructed that a reassigned station is eligible to receive a waiver of the July 12, 2017 filing deadline for its post-incentive auction construction permit if the station demonstrates that due to extraordinary technical or legal issues beyond the station's control, it is "unable to construct" the post-auction facilities specified to it in the *Closing and Channel Reassignment Public*

¹ See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (MB & WTB 2017) (*Closing and Channel Reassignment Public Notice*). See LMS File No. 00000024866, Statements in Support of STA Request (Waiver Request).

Notice or within the permissible contour coverage variance.² If the Media Bureau grants a station such a waiver, the station is permitted to file a request for a construction permit in the first priority window to seek an alternate channel and/or expanded facilities.³ A station whose request to file its construction permit application in the first priority window is granted because it is “unable to construct” will also be granted additional time to submit its reimbursement cost estimate form (FCC Form 2100, Schedule 399) detailing its estimated relocation costs.⁴ The station may, however, choose to file its cost estimate form by the July 12, 2017 filing deadline so that the Commission can use that information as the basis for the initial allocation for the station’s construction project. The Commission will assign a proxy estimate for stations filing in the first priority window that do not submit cost estimate information on FCC Form 2100, Schedule 399 by July 12, 2017.⁵

KCEC is currently licensed to operate on channel 26 and was reassigned to channel 14 in the *Closing and Channel Reassignment Public Notice*. Entravision notes that channel 14 utilizes the 470-476 MHz spectrum which lies immediately adjacent to LM operations in the 460-470 MHz band. Under subsections 73.687(e)(3) and (4) of the Commission’s Rules, channel 14 permittees and licensees are required to undertake efforts to avoid and prevent interference to adjacent spectrum land mobile radio service facilities.⁶ Entravision’s consulting engineers have analyzed the potential operation of the Station on channel 14 and determined that there would be a negative impact on local land mobile operations including that of WPPC331, which is the closest LM facility to the existing and proposed transmitter site used by the Station.⁷ In order to deal with such interference, Entravision maintains that it would have to engage in mitigation efforts to prevent any actual or passive intermodulation. However, Entravision argues that high cost mitigation efforts, including filtering, have not generally been proven successful in protecting LM facilities from interference by channel 14 licensees.⁸ Entravision’s consulting engineers point to the fact that KTNC-TV, Concord, California, was unable to resolve LM interference issues resulting from passive intermodulation when it operated on channel 14.⁹ They also discuss that while

² *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6794, para. 554 (2014), subsequent history omitted, (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(1)(iv)(A). The Commission has stated that a station may be found to be “unable to construct” the facility specified in the *Closing and Channel Reassignment Public Notice*, for example, if a station is unable to construct a compliant facility on its current tower and a replacement tower cannot be constructed from which the station would be able to meet the specified technical parameters. *Incentive Auction R&O*, 29 FCC Rcd at 6791 n.1551.

³ See 47 CFR § 73.3700(b)(1)(iv)(A). Applications filed during the first priority window will be treated as filed on the last day of that window for purposes of determining mutual exclusivity and will be given a 90-day period to resolve the MX by proposing a technical solution or settlement in an amendment to their pending applications. See *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition Procedures*, Public Notice, 32 FCC Rcd 858, 870, para. 36 (MB 2017) (*Broadcast Transition Procedures Public Notice*).

⁴ See *id.* at 884 n.180 (citing *Incentive Auction R&O*, 29 FCC Rcd at 6823 n.1754).

⁵ *Closing and Channel Reassignment Public Notice*, 32 FCC Rcd at 2815, para. 86 (“The Commission will assign a proxy estimate using, for instance, the cost estimates of similarly situated stations, in order to provide those stations with an initial allocation.”).

⁶ 47 CFR §§ 73.687(e)(3),(4).

⁷ Waiver Request at 2.

⁸ *Id.*

⁹ *Id.*, Exhibit A at 5.

Station KTFD-TV, Denver, Colorado formerly operated on analog channel 14 and now operates on digital channel 15, the location of KTFD-TV's facilities in relation to LM facilities and Lookout Mountain, the location of KCEC's facilities, allowed it to install sufficient filters to operate without causing LM interference.¹⁰

Entravision also argues that the use of filtering may not be an option for the Station. Entravision has reviewed the available facilities at the Lookout Mountain antenna farm where Entravision is a licensee of a third-party's transmission facilities. The transmitter building, as presently constructed, is not large enough to house a bandpass filter and would need to be expanded or a new one constructed.¹¹ While Entravision concedes that an expansion may be possible, it is not certain that it can secure the necessary land use authorizations given what describes as the "long and tortured history of local community opposition to communications facilities operating at the antenna farm."¹²

Entravision maintains that, in the absence of interference protections that a broadcast station can employ successfully, it would be left to the LM industry to deal with desensitization and intermodulation effects. Entravision is unable to determine the cost of such mitigation or if a combination of Station filtering and LM receiver desensitization and intermodulation mitigation, through filtering, will work as a means for preventing LM interference.¹³ Further, Entravision questions if these unique efforts would be reimbursable.

Entravision urges the Commission to recognize the unusual circumstances in this case and has requested waiver so that it and the Commission "can structure a result that provides the Station with the statutorily required post-auction facilities while not imposing upon Entravision unacceptable and uncompensated costs for the remediation of interference to LM licensees in the 460-470 MHz band in the Denver television market."¹⁴ If Entravision is unable to find an alternate channel during the first priority window it requests that the Commission "recognize" that Entravision "should not be responsible for mitigating LM interference owing to the unique circumstances of the repacking process and its operations on Lookout Mountain."¹⁵

Discussion. A waiver is appropriate "where the particular facts make strict compliance inconsistent with the public interest" and a deviation from the general rule would relieve hardship or produce a "more effective implementation of overall policy on an individual basis."¹⁶ In this case, we find that it would not be consistent with the public interest to require Entravision to apply for post-incentive auction facilities that it may be physically unable to construct at its current site and even if constructed and applying mitigation techniques would likely cause prohibited interference to existing LM facilities. A staff analysis of the included technical exhibit confirms that unresolvable interference is likely.¹⁷ Based on the foregoing, we find that Entravision has demonstrated that it is unable to construct

¹⁰ *Id.*, Exhibit A at 6.

¹¹ *Id.* at 2-3.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 3-4.

¹⁶ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 CFR § 1.3.

¹⁷ See Waiver Request, Exhibit A.

its post-auction facility as assigned to it in the *Closing and Channel Reassignment Public* and conclude that it is in the public interest to allow Entravision to apply for an alternate facility for KCEC during the first priority window. While Entravision requests that we not hold it responsible for mitigating LM interference if it is unable to find an alternate channel, our rules require stations on channel 14 to take steps to prevent interference to land mobile facilities.¹⁸ In any event, Entravision's concern that it will be unable to find an alternate channel is premature.¹⁹

We remind Entravision that, when filing in the first priority window, it must protect the construction permit facilities of reassigned stations and band changing stations filed in the initial 90-day period if those stations' applications have been granted or remain pending. Otherwise, applicants in the first priority window must protect the facilities specified in the *Closing and Channel Reassignment Public Notice*.²⁰ In addition, all applications filed in the first priority window must protect the facilities specified in applications filed before the April 2013 freeze with "cut-off" protection.²¹ The facilities proposed in applications filed during the first priority window will be entitled to interference protection from subsequently-filed applications and amendments thereto.²² We also remind Entravision that our action does not change the transition schedule, including the station's phase assignment, testing period, or phase completion date.²³

The above facts considered, Entravision's request for waiver **IS GRANTED** and the July 12, 2017 deadline for submission of both its application for post-incentive auction construction permit (FCC Form 2100, Schedule A) and reimbursement cost estimate form (FCC Form 2100, Schedule 399) **IS WAIVED**. Furthermore, Entravision is instructed to submit an application for construction permit for KCEC in the first priority window, which will be announced by Public Notice and commence shortly

¹⁸ 47 CFR §§ 73.687(e)(3), (4).

¹⁹ In light of our action granting Entravision's waiver request, we also decline to address any reimbursement issues potentially related to moving to channel 14. See Waiver Request at 3-4 (discussing financial liability concerning the relocation of channel 14 LM facilities). Whether or not a specific cost meets the "reasonably incurred" standard for reimbursement must be evaluated on a case-by-case basis. See *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

²⁰ See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 867, para. 30.

²¹ See *Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate*, Public Notice, 28 FCC Rcd 4364 (MB 2013).

²² See *Incentive Auction R&O*, 29 FCC Rcd at 6794 n.1573 (citing *Commission Lifts Freeze on Filing of Maximization Applications and Petitions for Digital Channel Substitutions, Effective Immediately*, Public Notice, 23 FCC Rcd 8330 (2008)).

²³ See *Incentive Auction R&O*, 29 FCC Rcd at n.1551. To make a change to a station's phase assignment and corresponding transition deadlines, a licensee must file a Request for Modification and Waiver of its phase assignment by filing a Legal STA in LMS. See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 887, Appx. A (providing instructions for filing a Legal STA in LMS). The Bureau will evaluate such requests on a case-by-case basis in order to facilitate a timely and orderly transition and assess the impact of such requests on the transition schedule, including the impact on other broadcasters as well as viewers. See *Incentive Auction Task Force and Media Bureau Adopt Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd 890, 912-14, paras. 49-52 (MB 2017); see also *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 881-82, para. 73. No fee is required to file a Legal STA that contains a request for modification and waiver of a station's phase assignment.

after conclusion of the initial 90-day filing period.²⁴ Entravision is also instructed to submit its reimbursement cost estimate form for KCEC within 30 days of receiving a construction permit for an alternate channel or expanded facility.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. A. Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

²⁴ See *Broadcast Transition Procedures Public Notice*, 32 FCC Rcd at 867, para. 30 and n.49 (citing *Incentive Auction R&O*, 29 FCC Rcd at 6795, para. 556 (delegating authority to the Bureau to issue public notices announcing filing opportunities for alternate channels and expanded facilities and stating that the staff will open the first priority window after it substantially completes its processing of initial minor change construction permits)).