

Request for Construction Permit Reinstatement and Waiver of Filing Deadline

Entravision Holdings, LLC (“Entravision”), the licensee of KTFV-CD, McAllen, Texas (FID 28280) (the “Station”) hereby requests, pursuant to Section 1.3 of the Federal Communications Commission’s (“FCC” or “Commission”) Rules, 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.

KTFV-CD previously operated on channel 48 before the broadcast television incentive auction.¹ Following the auction, KTFV-CD was required to vacate channel 48. After receiving a construction permit,² KTFV-CD began operating on channel 32 on March 13, 2020. Attached hereto as Exhibit A is contemporaneous correspondence between Entravision Engineer Mark Cavazos and Entravision’s Chief Technology Officer, Sonny Cavazos, confirming that KTFV-CD and a second station, KNVO(TV), were operating on their new channels as of March 13, 2020. Unfortunately, due to an administrative oversight, although Entravision filed a license to cover for KNVO(TV),³ it did not file a license to cover, a request for special temporary authority (“STA”), or a request for waiver of Section 312(g) of the Communications Act for KTFV-CD.

The FCC can grant licensees a waiver of its rules for good cause.⁴ For example, the Commission previously granted numerous waivers for licensees who built facilities before their respective construction deadlines but filed license applications after their permit expiration date.⁵ Under Commission Rules, “[a]ny construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.”⁶ In this case, Entravision timely completed construction before the construction permit for KTFV-CD expired. Consequently, the Commission should waive any time limits that prevent Entravision from addressing an administrative error.

¹ File No. BLDTA-20120213AAP.

² File No. 0000028392.

³ File No. 0000108949

⁴ 47 C.F.R. § 1.3.

⁵ 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 Application filing with no monetary penalty).

⁶ 47 C.F.R. § 73.3598(e).

Under Commission precedent, the FCC uses the automatic forfeiture provision for rare occasions involving a “singular and narrow purpose: conservation of Commission staff resources.”⁷ The Media Bureau has delegated authority to grant waivers for good cause,⁸ and the Commission has “followed long-standing precedent which establishes that unintended consequences of a Rule are a significant factor favoring a Rule waiver.”⁹ Ultimately, granting a waiver for good cause aligns with the Commission’s commitment to reserving automatic forfeiture for extraordinary circumstances because “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.”¹⁰

Entravision takes seriously its duties under Commission Rules and attempted to fulfill its obligations in this case. Immediately after discovering that it inadvertently failed to file the license, Entravision acted swiftly to notify the Commission and file the instant request. Declining to grant the relief requested herein would create a substantial hardship for Entravision and KTFV-CD, which offers crucial Spanish-language programming to communities in McAllen, Texas. Therefore, good cause exists for granting this waiver, as failure to do so would significantly burden KTFV-CD viewers for a mere administrative oversight.

For the foregoing reasons, Entravision respectfully requests that the Commission reinstate the construction permit, waive those portions of Section 73.3598 of the Commission’s Rules that require filing a license to cover application before a construction permit expires, and grant the instant license application. By granting the application, the Commission’s actions would adhere to the agency’s precedent and serve the public interest in McAllen, Texas.

⁷ *WRKH(FM), Mobile Alabama*, 23 FCC Rcd. 4526 (2008) (citing *1998 Regulatory Review -Streamlining of Mass Media Applications, Rules and Processes*, Report and Order, 13 FCC Rcd 23056, 23087-88 (1998) (“*Streamlining Order*”) *recon. granted in part and denied in part*, 14 FCC Rcd 17525 (1999)).

⁸ See 47 C.F.R. §§ 0.201, 0.283; *see also* 47 C.F.R. § 1.3.

⁹ See *WRKH(FM), Mobile Alabama*, 23 FCC Rcd. 4526 (2008) (citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)).

¹⁰ *WRKH(FM), Mobile Alabama*, 23 FCC Rcd. 4526 (2008) at n. 37 (citing *WAIT Radio v. FCC*, 418 F.2d 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.).

Exhibit A

From: Mark Cavazos <mcavazos@entravision.com>

Date: Fri, Mar 13, 2020 at 12:18 AM

Subject: RePack

To: Tommy Balli <tballi@entravision.com>, Sonny Cavazos <scavazos@entravision.com>, Harry Thielemann <hthielemann@entravision.com>

KNVO and KTFV are running on the new RF frequency as of midnight. No problems. Harry and I shut power to the ranger and the power CD before we turned on the new transmitters.

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Sonny Cavazos
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