

## **Request for Waiver**

For the reasons set forth below, Pillar of Fire (“Pillar”), licensee of KPOF(AM), Denver, Colorado, hereby seeks a waiver of the Commission’s policy that prohibits an AM licensee from filing an application for a new FM translator in the current Auction 100 filing window if the AM station identified as the primary station was identified as a primary station in a previous *AM Revitalization* filing window application. While KPOF was identified as the primary station on a modification application filed during a so-called “250-mile” window, Pillar is without a translator available for use with KPOF. Thus, the Commission’s stated goal of allowing AM stations to improve service through expanded use of FM translators, as set forth in *Revitalization of the AM Radio Service*, 15 FCC Rcd 12145 (2015) (the “*AM Revitalization Order*”), would be served by granting this waiver.

Because of a simple misunderstanding of the application of the Commission’s rules and policies related to silent stations - - and despite the fact that Pillar had constructed the authorized modified facilities of a translator it acquired (K255BL) and commenced operation of those facilities - -, the grant of translator’s application for license to cover the modified facilities (File No. BLFT-20170619ADZ) was rescinded, the application was dismissed, and the underlying license was cancelled. In order to rectify this situation, Pillar seeks to apply for a construction permit for a new translator to replace K255BL. But due to concerns about supply of and demand for FM translators, and to avoid allowing certain stations to double up on translators, the Commission determined that an AM station could be identified as the primary station in only one FM translator application submitted during one *AM Revitalization* filing windows. *Id.* at 12153 n. 40.

As a result, absent a waiver to allow Pillar to file a new application, KPOF will be left without a companion FM translator, and the Commission's purpose of improving AM service will be frustrated. Grant of the requested waiver, on the other hand, will further the Commission's goal of aiding AM station KPOF. Without an opportunity to seek a new translator, KPOF will have been deprived of its only realistic prospect for being able to acquire an FM translator to better serve its audience, and promoting such service improvement was the entire purpose of the *AM Revitalization Order*. Thus, the waiver requested herein clearly would better serve the public interest than an application of the Commission's "one chance" restriction. Furthermore, Pillar's unique circumstances distinguish this request from similar requests that might be made by other AM stations. Accordingly, the grant of the waiver is consistent with the Commission's standards and would serve the public interest.

The factual background of this request is as follows. KPOF is a legacy AM station, which has been providing service to the public for nearly ninety years. In fact, KPOF was first licensed on January 17, 1927, before the FCC was established, before the Federal Radio Commission was established, and even before the enactment of the Federal Radio Act of 1927. The station's first broadcast took place on March 9, 1928, and it has been serving the public ever since. Over the years, however, providing this service has become more and more difficult. During all of the time that it has been on the air, although licensed as a commercial station, KPOF has operated noncommercially, and it relies on listener donations for its financial support. Over the nine decades of KPOF's operation, much has changed, and those changes have made operation of an AM station far more difficult. At the time KPOF went on the air, Denver was a city of modest size with relatively low buildings surrounded by farm and ranch land and stockyards. Since then, however, the city of Denver has seen considerable construction, many

new broadcast stations have come on the air, huge numbers of electronic devices unfathomable in 1928 have come into service, and the electronic noise threshold affecting an AM station such as KPOF has vastly increased. Meanwhile, KPOF has continued to offer the same service, now with a daytime power of 5.0 kW, but with a nighttime power limited to only one kW.

When Pillar learned of the Commission's AM revitalization project, which would provide it the opportunity to acquire and move an existing FM translator to use with KPOF, it eagerly began seeking a translator that it could acquire. The sole one it found that it could afford and that could be moved for use with KPOF, was K255BL. That facility had gone silent in November of 2015 due to loss of permission to carry its then-primary station. In March of 2016, in anticipation of the filing window that would allow a translator to be moved up to 250 miles in order for it to be associated with an AM station, Pillar entered into an agreement to purchase K255BL and, with the station's then-licensee, Professional Antenna, Tower and Translator Service ("PATTS"), filed an application for consent to assignment of the license to Pillar, File No. BALFT-20160315ABU. That application was granted on May 10, 2016.

Thereafter, and while the station was still licensed to PATTS, PATTS filed an application to modify the license for K255BL to change the station's location so that it could be used as a translator for KPOF, File NO. BPFT-20160729AAI. This application was filed shortly after the opening of the window allowing such filings, and was granted on August 16, 2016. The construction permit as granted contained no language with regard to the silent status of K255BL and only included conditions common to translator construction permits. With this construction permit in hand, which would allow for new facilities for K255BL to serve as a translator for KPOF, PATTS and Pillar closed on the purchase of the translator on August 30, 2016. In the

meantime, PATTS had filed, and the Commission had granted, an application for extension of the authority for K255BL to remain silent.

Pillar had seen in May the grant of an assignment of the K255BL license, which noted the silence of the station and provided a deadline for its return to operation. Subsequently, however, Pillar received a new authorization, the construction permit for construction of new facilities for K255BL. This permit specified a substantially different facility, with a new community of license, and made no mention of the station's license status, but merely stated that the authorized facilities must be built within 36 months of the grant date. Because this permit was granted after the assignment of license, and because it made no mention of any earlier deadline for resumption of broadcasting, Pillar's understanding that the expiration date set forth on the later-granted construction permit superseded the date stated in the earlier grant, while incorrect, was not unreasonable. Pillar continued in this belief until March of 2017, at which point it learned its error; but by that time, the December 1 date was already in the past. Unfortunately, there was no way to go back in time and take the steps it would have taken if it had understood the deadline.

Pillar then filed a Petition for Waiver of an automatic expiration of the K255BL license. Pillar also decided to return K255BL to the air as promptly as possible. At that time, its license had not been cancelled, and Pillar built the facilities in accordance with its valid construction permit. On June 19, 2017, it filed an application for license, File No. BLFT-20170619ADZ, and put the translator on the air the same day. The license application was granted June 28, 2017, but that grant was rescinded by letter decision of the Chief, Audio Division, Media Bureau, 1800B3-VM, dated July 12, 2017 (the "Letter Decision"), and Pillar took the translator off the air promptly after learning of the Letter Decision. The Letter Decision also cancelled the K255BL

license. That decision has been affirmed by the Commission, *Pillar of Fire*, FCC 17-144, released November 3, 2017, based in part upon a finding that a misunderstanding of the Commission's requirements does not excuse failure to resume operations.

While such a misunderstanding might not be sufficient to avoid the statutory-based automatic expiration of a station's license, Pillar's diligent efforts to construct the station at its new authorized location, marred only by a not unreasonable misunderstanding of applicable requirements, do add equitable considerations in its favor to this waiver request. Furthermore, Pillar has already been deprived of the FM translator for which it expended its funds, and it is now seeking only a chance to obtain a construction permit for a new translator.

Effectively telling Pillar that not only has it lost its existing translator but that it also has lost any opportunity to apply for a replacement is too great a consequence for a simple misunderstanding. More importantly, the result of depriving a major market AM station of any opportunity to improve service through use of an FM translator is squarely contrary to the Commission's purposes in adopting the *AM Revitalization Order*. In that order, the Commission noted how AM stations have served the public by providing vital news and information, both every day and in times of disaster or emergency. *AM Revitalization Order*, 30 FCC Rcd at 12146. FM translators enable AM stations to expand that service, both at hours when AM stations might be required to reduce power and through better technical characteristics. In the case of KPOF, which is one of the oldest stations in the country and has been serving the public for 90 years, this record of service outweighs one misunderstanding of Commission policy, which has already had disastrous consequences. Depriving an AM station of any chance to obtain a translator would be directly in opposition to the Commission's stated policy in this regard. Moreover, even if one were to conclude that Pillar should have taken more steps to

understand Commission deadlines, not allowing Pillar even to apply for a new translator to replace what was lost would be sending the message that a record of nine decades of public service is not even worthy of consideration. Thus, strict compliance with Commission policy would mean that an historic AM station, which has been struggling against technical odds for decades, would be deprived of its last feasible opportunity to obtain an FM translator. Clearly, this result is contrary to the public interest.

Furthermore, a grant of Pillar's requested waiver in this instance could not open the proverbial floodgates to other waiver requests, and the circumstances here can easily be distinguished from those of other potential applicants. First and foremost, it must be remembered that this is the last window exclusively for AM stations to seek a companion translator to be permanently associated with the AM station. With this window, the Commission's efforts to assist AM stations by making it easier for them to obtain a translator will be complete. Since no further cross-service translator windows are anticipated, there would be no opportunity for any future applicant to seek this type of waiver in the future.

Additionally, grant of a waiver in this instance will not run contrary to the purposes for the Commission's adoption of the policy limiting AM stations to participation in only one of the FM translator filing windows. As noted above, that decision was stated to relate to the number of currently authorized translators, and thus, presumably, the spectrum occupied by them, and the demand for translators by other than AM station licensees. *AM Revitalization Order*, 30 FCC Rcd at 12153, n. 40. At the same time, however, the Commission also indicated that the reason for having the window to seek new FM translators is because "some AM stations may not be successful in locating translators." *Id.* at 12153. Moreover, Pillar's circumstances are unique. It is a non-profit entity operating noncommercially in the commercial band. The reason that it was

not able to retain and operate an FM translator sought in connection with a modification window was not due to any lack of diligence on Pillar's part but rather due to an understandable error. Despite the fact that some strict deadlines, such as construction deadlines, were extended by the *AM Revitalization Order*, see 30 FCC Rcd at 12152, n. 36, Pillar was not afforded any such extension. It was only after the relevant date, however, that Pillar came to understand that the stated expiration date of a later-issued authorization did not supersede the date on an earlier issued silence authorization, as one might logically expect. Nonetheless, Pillar moved ahead diligently with construction of the translator's authorized facilities and returned the station to operation within ten months of acquiring the facility. This is not a case in which a party dragged its feet or took no action, but rather it moved as quickly as its limited resources would allow. As a result, construction was completed within less than one-third the time allowed by the construction permit, and operations were resumed well within 12 months after Pillar became the licensee, which would have been within the period allowed if Pillar were not held responsible for a previous licensee's taking the station silent. Pillar understands the policy reasons behind not re-starting the count of a period of silence with the assignment of a license, but the fact that in virtually every other circumstance, a licensee is not held responsible for the actions or inactions of a prior licensee is an added equitable consideration favoring a grant of the requested waiver.

Taking all of the circumstances into consideration, it is clear that a grant of the waiver requested herein would better serve the Commission's considered policy of revitalizing the AM radio service, whereas a denial of the waiver would run contrary to the Commission's explicitly stated purposes. Likewise, allowing Pillar to move forward with an application for construction permit for a new translator would have no adverse consequences, particularly in view of Pillar's

unusual circumstances, its diligent activities, and its lengthy record of providing radio service to the public.