

DA 99-1872
September 14, 1999

Mr. Jim Didier
Black Hills Broadcasting, L.L.C.
Rapid City, SD 57702

Dear Mr. Didier:

This letter responds to your letter of September 8, 1999, requesting waiver of the filing deadline for submission of FCC Form 175 ("short-form application") for Auction No. 25.¹ You claim that extenuating circumstances delayed the filing of your application and request that you be permitted to file after the deadline of August 20, 1999, 5:30 p.m. Specifically, you claim that you did not have notice of the short-form application filing deadline.²

To obtain a waiver of the Commission's auction application filing deadline, you must show "(i) that the underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or (ii) that the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest."³ For the reasons cited below, we find that the circumstances you describe in support of your waiver request fail to meet the Commission's criteria for obtaining a waiver.

The Commission established the August 20, 1999 filing deadline in a *Public Notice* released July 9, 1999.⁴ The Commission's Rules require that short-form applications be

¹ See Letter from Jim Didier, Black Hills Broadcasting, L.L.C., to Mark Bollinger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (September 8, 1999 ("Letter")).

² *Id.* at 1.

³ 47 C.F.R. . 1.925; *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)

⁴ See "Closed Broadcast Auction; Notice and Filing Requirements for Auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits Scheduled for September 23, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 99-1346 (rel. July 9, 1999) ("*Broadcast Auction Public Notice*").

electronically filed.⁵ To facilitate filing, the Commission's remote access system was available for submission of applications 24 hours per day beginning August 3, 1999.⁶ Applicants were cautioned that "[l]ate applications or unconfirmed submissions of electronic date will not be accepted."⁷

⁵ 47 C.F.R. . 1.2105

⁶ *Broadcast Auction Public Notice* at 12 and Attachment D, p. 1.

⁷ *Broadcast Auction Public Notice*, Attachment D, p. 1.

You state that, in December, 1997, you contacted the Commission via telephone and requested your name be placed on a notification list for the upcoming auction, but that you did not receive any notification of the auction.⁸ You further state that, during the last week of August, 1999, you first learned of the August 20, 1999 short-form application deadline.⁹ In addition, you state that you were unable to access information relating to the auction because the computer system you utilized for this purpose failed to view or download information contained on the Commission's website.¹⁰

On the basis of the record before us, we are not persuaded that you have demonstrated that application of the deadline in its case would undercut or frustrate its purpose, nor do we find that you have presented unique circumstances sufficient to justify grant of your waiver request. The Commission's rules and public notices provided comprehensive notice of filing procedures for Auction No. 25.¹¹ The Commission's rules are best served by applying deadlines in a fair and consistent manner. We also believe that you had sufficient time to submit your application prior to the filing deadline. Notice of the auction and relevant filing deadlines were made via public notices and the *Federal Register*. Review of these sources is your responsibility as an applicant and, therefore, lack of actual notice does not excuse your failure to meet the application deadline. The Bureau has repeatedly stated that all applicants are responsible for maintaining current information regarding Commission rules and public notices pertaining to auctions.¹² In addition, applicants are responsible for ensuring that their computer systems are adequate to connect and interface with the Commission's filing software.¹³ Accordingly, we are not convinced that grant of waiver is warranted or would be in the public interest. Therefore, your request for waiver of the short-form application submission deadline is denied.

⁸ *Letter* at 1.

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ See footnote 4, *supra*. See also Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Services Licensees, MM Docket No. 97-234, *First Report and Order*, 13 FCC Rcd 15920 (1998) ("*Broadcast First Report and Order*"), *recon denied*, *Memorandum Opinion and Order*, FCC 99-74 (rel. Apr. 20, 1999), *modified*, *Memorandum Opinion and Order*, FCC 99-201 (rel. Aug. 5, 1999).

¹² *Broadcast Auction Public Notice*, p. 6. See also *Two-Way Radio of Carolina, Inc., Request for Waiver of 47 C.F.R. . 1.2105(b)(2)*, *Memorandum Opinion and Order*, FCC 99-189, . 13 (rel. July 22, 1999); *AMK International Inc.*, 12 FCC Rcd 1511, 1514, . 9 (WTB 1997).

¹³ *Broadcast Auction Public Notice*, Attachment D.

This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.¹⁴

Sincerely,

Amy J. Zoslov
Chief, Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

¹⁴ 47 C.F.R. . 0.331.