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In Reply Refer To:
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Edward A. Schober, PE
P.O. Box 367
Haddon Heights, NJ 08035

In re: Auction 99, Public Notice
AU Docket No. 17-143
DA 17-533

Petition for Reconsideration in Part

Dear Mr. Schober:

We have before us a Petition for Reconsideration in Part (Petition) of the public notice, released by the Media Bureau and Wireless Telecommunications Bureau (Bureaus) June 6, 2017, announcing the first of two auction filing windows during which an AM broadcast station licensee or permittee could apply for a new cross-service FM translator to rebroadcast its AM station.¹ Edward A. Schober, PE (Schober), a consulting engineer, member of entities that are licensees of an AM station and an FM translator, and himself a licensee and permittee of AM stations and FM translators, filed the Petition on June 10, 2017, requesting “limited reconsideration of the eligibility criterion” contained in the *June Filing Window Public Notice*.² We dismiss the Petition.

Background. In its First Report and Order in the *AM Revitalization* proceeding,³ the Commission ordered the Media Bureau to provide four opportunities for AM licensees and permittees to acquire cross-service FM translators to rebroadcast their signals.⁴ The first two opportunities were modification windows during which an AM licensee or permittee seeking to rebroadcast on an FM translator could acquire and relocate one authorized non-reserved band FM translator station up to 250 miles, and specify any rule-compliant non-reserved band FM channel, as a minor modification application, notwithstanding contrary provisions of the Commission’s rules.⁵ The second two opportunities were auction filing windows during which an AM licensee or permittee could apply for a new cross-service FM translator station, which would be permanently linked to the AM primary station

¹ *Filing Instructions for Cross-Service FM Translator Auction Filing Window for AM Broadcasters to be Open July 26 – August 2, 2017*, Public Notice, 32 FCC Rcd 4663 (MB/WTB 2017) (*June Filing Window Public Notice*).

² Petition at 1.

³ *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, 30 FCC Rcd 12145 (2015) (*AM Revitalization First R&O*).

⁴ *Id.* at 12152-54, paras. 15-17.

⁵ *Id.* at 12152, para. 15. The Commission waived 47 CFR § 74.1233(a)(1), which defines major and minor modifications of FM translator facilities.

that it would rebroadcast. The Commission specified in the *AM Revitalization First R&O* that the first new translator auction window was open to Class C and D AM station applicants that “[did] not participate, i.e., file an application, in one of the modification windows.”⁶ The Commission went on to state in the same rulemaking order that the second and final auction window “will be open to all AM permittees and licensees that have not participated in any of the prior modification or auction windows.”⁷

Schober did not seek reconsideration of the *AM Revitalization First R&O*. He did, however, file his Petition after release of the *June Filing Window Public Notice*, specifically disputing the Bureaus’ statement that “[a] licensee or permittee whose AM station was listed as the primary station in a modification application filed during one of the two 2016 modification windows is not eligible to apply during this filing window.”⁸ Schober states that the “blanket nature of the eligibility restriction . . . is unfair to certain licensees who applied in the previous windows,”⁹ going on to cite eight categories of applicant to which he believes the eligibility requirement is unfair.¹⁰ He thus seeks reconsideration of the criterion excluding applicants who previously filed applications in the modification windows.

Discussion. Eligibility to apply in the 2017 (Auction 99) and 2018 (Auction 100) auction filing windows for new cross-service FM translator stations was defined by the Commission in the *AM Revitalization First R&O*. The Commission clearly stated that any applicant that participated in either of the two modification windows would be ineligible to file in subsequent auction windows, and further defined participation as filing an application. The Bureaus merely repeated the Commission’s determination when they defined eligibility in the *June Filing Window Public Notice*. Because neither Schober nor any other party sought reconsideration of the *AM Revitalization First R&O* as to this issue, the Commission did not change its determination and, consequently, the eligibility criteria established by the Commission in the *AM Revitalization First R&O* were implemented correctly by the Bureaus for Auction 99. Accordingly, we dismiss the Petition as a late-filed request for reconsideration of the eligibility criteria established in the *AM Revitalization First R&O*.

We will consider, however, such requests on a showing of good cause, when the facts of a particular case make strict compliance with a rule inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.¹¹ Thus, applicants that participated in prior FM translator modification windows or the first

⁶ *AM Revitalization First R&O*, 30 FCC Rcd at 12153, para. 17.

⁷ *Id.*

⁸ *June Filing Window Public Notice*, 32 FCC Rcd at 4665, para. 5.

⁹ Petition at 2.

¹⁰ *Id.* Schober’s categories are: applicants that filed applications that were defective, conflicting, or otherwise not grantable and were dismissed with no modification granted; applicants whose applications were dismissed to resolve application conflicts; applicants that lost at auction (of whom, we note, there are as yet none); and applicants whose construction permits or underlying construction permits expired while awaiting approval of federal, state, or local government action. Schober also lists the following categories of applicants he believes should be allowed to apply, even though their original FM translator licenses were granted, conditioned on return of the original license: applicants whose licenses were granted but silenced due to interference; applicants whose licenses were granted but silenced due to changes in full-power FM stations; applicants whose licenses were substantially limited (e.g., power or height above average terrain reduced) due to interference or changes in full-power FM station; and applicants whose construction permits remain tolled due to environmental issues, local approvals, unresolved petitions, or informal objections. *Id.*

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*). In granting a waiver, the Commission must both explain why deviation from the rule better serves the public interest than strict application of the rule, and must articulate the nature of the

auction window that believe they can make the requisite compelling waiver showing to justify their eligibility for a later auction window may do so, and will receive the requisite “hard look.”¹²

Conclusion. For the foregoing reasons, the Petition for Reconsideration in Part filed by Edward A. Schober IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

special circumstances to prevent discriminatory application and to put future parties on notice as to its operation. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)). The Bureaus have received applications from otherwise ineligible applicants that concurrently requested waiver of the prohibition against prior window participants applying in a new FM translator auction window.

¹² See *Wait Radio*, 418 F.2d at 1157.