

Federal Communications Commission
Washington, D.C. 20554

March 1, 2000

DA 00-436

David M. Silverman, Esq.
Cole, Raywid & Braverman, L.L.P.
1919 Pennsylvania Avenue, N.W.
Second Floor
Washington, D.C. 20006-3458

Re: Three Angels Broadcasting Network, Inc.
Request for Waiver
Supplemental Closed Broadcast Auction No. 28

Dear Mr. Silverman:

This letter responds to your letter dated February 23, 2000, requesting on behalf of your client Three Angels Broadcasting Network, Inc. ("Three Angels") waiver of the filing deadline for submission of its FCC short-form (Form 175) application for Auction No. 28.¹ Your letter and the attached declaration claim that your client's failure to file a short-form application by the filing deadline was inadvertent and that waiver of the deadline serves the public interest because Three Angels provides unique programming.

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.² 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 February 18, 2000 filing deadline in a *Public Notice* released December 23, 1999.³ The Commission's Rules require that short-form (Form 175)

¹ See Three Angels Broadcasting Network, Inc. Request for Waiver, filed on or about February 24, 2000.

² 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).

³ See "Supplemental Closed Broadcast Auction; Auction No. 28, Notice and Filing Requirements for Auction of AM, FM, TV, LPTV, and FM and TV Translator Construction Permits Scheduled for March 21, 2000; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 99-2958 (rel. December 23, 1999) ("*Auction No. 28 Public Notice*").

applications be electronically filed.⁴ To facilitate filing, the Commission's remote access system was available for submission of applications 24 hours per day beginning February 3, 2000.⁵ Applicants were cautioned that late applications would not be accepted.⁶

Your client claims that it provides unique programming consisting of health related and educational programs, children's programs and multilingual programming in addition to and as part of its religious programming, and that such programming clearly serves the public interest. You state that your client was an active participant in Auction No. 25 and a successful bidder for two low power TV stations and had filed three long-form applications scheduled for auction in Auction No. 28. The declaration of Moses Primo, Director of Broadcasting Operations and Engineering for Three Angels Broadcasting Network, Inc., attached to your letter states that the short-form (Form 175) application was not filed prior to the deadline because of his "oversight." Mr. Primo states that he was "traveling that week doing live uplink programs ... and only upon my return to the office on Tuesday, February 22, 2000, did I realize I was in great fault."

On the basis of the record before us, we are not persuaded that you have demonstrated that application of the deadline in this 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. 28.⁷ 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. By your client's admission, it missed the short-form (Form 175) application filing deadline through its own fault. 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 (Form 175) application submission deadline is denied.

⁴ 47 C.F.R. § 1.2105.

⁵ *Auction No. 28 Public Notice* at 17.

⁶ *Id.* at p. 16 and Attachment D, p. 1.

⁷ See 47 C.F.R. § 1.2105. 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), *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).

This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.⁸

Sincerely,

Mark R. Bollinger
Acting Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau

⁸ 47 C.F.R. § 0.331.