



PUBLIC NOTICE

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MEDIA BUREAU PROVIDES NOTICE OF SUSPENSION OF ELIGIBLE ENTITY RULE CHANGES AND GUIDANCE ON THE ASSIGNMENT OF BROADCAST STATION CONSTRUCTION PERMITS TO ELIGIBLE ENTITIES

By: Chief, Media Bureau

On July 7, 2011, the United States Court of Appeals for the Third Circuit issued a decision¹ vacating the Commission's "eligible entity" definition, and remanding those provisions of the *Diversity Order*² that rely on the "eligible entity" definition. Consistent with the *Court Decision*, actions required on remand will be addressed within the Commission's 2010 Quadrennial Review of the media ownership rules.³ Pending such review, the Media Bureau ("Bureau") has suspended application of the eligible entity rule provisions and policies in all contexts.

Under the *Diversity Order*,⁴ the Commission had provided certain broadcast assignees meeting the "eligible entity" definition with an opportunity to obtain an expiring construction permit and receive additional time in which to complete station construction.⁵ In response, the Bureau has extended a

¹ *Prometheus Radio Project v. FCC*, No. 08-3078 (3d Cir. July 7, 2011) ("*Court Decision*").

² *In the Matter of Promoting Diversification of Ownership in the Broadcast Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922 (2008) ("*Diversity Order*"). To delineate the group receiving the benefits of the measures adopted in the *Diversity Order*, the Commission used the term "eligible entity" as defined in the Commission's 2002 Biennial Review Order. See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13810-12 (2003). Generally, "eligible entities" are defined to include all entities that qualify as small businesses under the standards of the Small Business Administration for industry groupings based on revenue.

³ See 2010 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Inquiry, 25 FCC Rcd 6086 (2010).

⁴ *Diversity Order*, 23 FCC Rcd at 5928-31 (providing additional time when an eligible entity acquires an expiring construction permit).

⁵ 47 C.F.R. § 73.3598(a), as revised, provides that an eligible entity acquiring an issued and outstanding construction permit for a new unbuilt broadcast station shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment or transfer of control, whichever is longer, within which to complete construction and file a license application. See *Media Bureau Provides Guidance on Requests for Additional Time to Construct New Broadcast Stations Assigned to Eligible Entities Pursuant to Section 73.3598(a)*, Public Notice, 24 FCC Rcd 4116 (MB 2009).

number of broadcast station construction permits in connection with assignments to eligible entities under the 2008 *Diversity Order* procedures. This is the only one of the eligible entity rule or policy changes adopted in the *Diversity Order* that is at issue in any pending or non-final licensing proceeding.⁶ Below, we provide guidance on the effect of the *Court Decision* on those granted and pending applications involving assignments of broadcast construction permits to eligible entities.⁷

Final Application Grants. An application grant becomes final 40 days after public notice of the grant of the application, unless a petition for reconsideration or application for review is timely filed, or the Commission otherwise sets aside the grant.⁸ Vacatur does not impact an application grant that is final. Therefore, an assignment of a construction permit to an eligible entity is unaffected by the *Court Decision*, if the grant of the associated assignment application is final when the Court issues its mandate with respect to the *Court Decision*.

Non-final Application Grants. This category includes all assignment application grants that are not final (as defined above) when the Court issues its mandate. In all such cases, a construction permit extended pursuant to an application grant will revert back to its original expiration date. The staff will rescind those application grants and dismiss the assignment applications where the construction permit expired prior to application grant. In all cases in which construction was not completed prior to the original construction permit expiration date, the construction permit is automatically forfeited upon expiration without any further affirmative cancellation by the Commission.⁹ In situations in which a construction permit has not passed the original expiration date, the application grant will remain in effect, but the construction permit reverts back to the original expiration date. The prior extension of a permit pursuant to a non-final application grant will not provide the basis for any additional construction time.

Pending Applications. If the construction permit has expired, the construction permit is forfeited and the Bureau will dismiss the assignment application. If the construction permit has not expired, the Bureau will continue to process the assignment application unless the parties request otherwise, but the grant will not include a condition extending the construction permit. The pending status of an assignment application will not provide the basis for any additional construction time. The Bureau also will not entertain any new applications requesting such extensions.

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⁶ The other changes involve assignments or transfers of grandfathered broadcast station combinations exceeding the then-newly adopted ownership limits to eligible entities, and a relaxation of the “equity-debt plus” (“EDP”) rule for eligible entities in both the sales context and the auction context. *See Diversity Order*, 23 FCC Rcd at 5931-37 (modification of EDP rule, so to provide higher investment limits in eligible entities without triggering attribution consequences), 5944-45 (transfers of grandfathered radio station combinations involving eligible entities). *See also* 47 C.F.R. §§ 73.3555, Note 2(i), 73.5008(c).

⁷ Under any scenario, the *Court Decision* (including its effect on the plans or expectations of any party) does not constitute a tolling event under Section 73.3598(b) of the Commission’s Rules. *See* 47 C.F.R. § 73.3598(b).

⁸ *See* 47 C.F.R. §§ 1.106, 1.115, 1.117.

⁹ 47 C.F.R. § 73.3598(e).