

April 21, 2020

**VIA EMAIL DELIVERY**

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554  
*Attn: Audio Division, Media Bureau*

Re: K259BD, Rosamond, CA  
Facility ID No. 143757  
Construction Permit File No. BPFT-20170410AGO  
Construction Deadline: July 28, 2020

*Request for Tolling of Construction Permit*

Dear Ms. Dortch:

High Desert Broadcasting, LLC (“Licensee”) holds the above-captioned construction permit (“Construction Permit”) to modify the facilities of K259BD, Rosamond, California. By its counsel and pursuant to Sections 1.3 and 73.3598(b) of the Commission’s Rules,<sup>1</sup> Licensee hereby requests tolling of the construction period for the Construction Permit.

The impact of COVID-19 pandemic has forced Licensee to stop work on the modification of its facilities as authorized by the Construction Permit. Licensee had been making progress toward the completion of construction when a California government order (“California Executive Order”) issued on March 19, 2020, ordering California residents to stay at home as a measure to help slow the spread of the COVID-19 virus. See Exhibit 1. The California Executive Order has made work on construction next to impossible (and not desirable, for public safety reasons). Because of this Act of God, tolling is appropriate for at least 131 days – the time between the recent actions that stopped progress and the expiration date of the construction permit – with that period to remain in effect for six months, absent earlier resolution of the COVID-19 closure.

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<sup>1</sup> 47 C.F.R. §§ 1.3, 73.3598(b).

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Section 319(b) of the Communications Act of 1934, as amended, provides that a construction permit “will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, *unless prevented by causes not under the control of the grantee.*”<sup>2</sup> The Commission has established procedures for tolling the construction period for construction permits when warranted.<sup>3</sup> Specifically, Section 73.3598(b) provides that a construction period will toll when construction is prevented for certain “causes not under the control of the permittee.”<sup>4</sup> To receive tolling, a permittee must demonstrate that it could not build due to a Commission-recognized encumbrance and that the permittee has had, in total, less than three unencumbered years to construct the facility.<sup>5</sup>

Licensee submits that tolling of the Construction Permit would be appropriate in this case because, due to circumstances not under the control of Licensee, construction of K259BD is being encumbered by delays caused by a worldwide pandemic of historic proportions. Specifically, Licensee has been unable to secure the necessary permits to complete construction because the local permitting offices are now operating with a skeleton staff and are experiencing severe delays as a result. Moreover, while the radio station is considered an essential business, to ensure safety of its employees during this health crisis, Licensee is operating with the limited staff necessary to provide essential operations at its facilities to minimize the spread of the virus. The Licensee is reluctant to commit employees to preparations for construction and later to the construction itself during the current crisis. Similarly, in the current circumstances, the ability to schedule engineering and tower contractors to construct these new facilities is in doubt. As such, completing construction in the current environment does not appear to be possible.<sup>6</sup> Given the unique circumstances caused by the COVID-19 pandemic, Licensee’s inability to work on construction is beyond its ability to control and should be considered an “act of God,” which serves as a basis for tolling under Section 73.3598(b) of the Commission’s rules.

Licensee therefore submits that the public interest will be served by tolling the July 28, 2020 construction deadline for the Construction Permit, effective as of March 19, 2020, for six

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<sup>2</sup> 47 U.S.C. § 319(b).

<sup>3</sup> 47 C.F.R. § 73.3598(b); *see also* 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes, Report and Order, 13 FCC Rcd 23056 ¶¶ 83-90 (1998) (“*Streamlining R&O*”); 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525 ¶¶ 31-45 (1999) (“*Streamlining MO&O*”).

<sup>4</sup> 47 C.F.R. § 73.3598(b).

<sup>5</sup> *Wendell & Associates Request to Waive the Period to Construct Unbuilt Station WKNJ(AM), Harriman, New York*, Memorandum Opinion and Order, 17 FCC Rcd 18576, n.13 (2002).

<sup>6</sup> *Cf. Streamlining R&O* ¶ 84.

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months, or until the date on which all orders affecting construction of K259BD's new facilities are lifted.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

/David D. Oxenford/

David D. Oxenford

Kelly Donohue

Counsel for High Desert Broadcasting, LLC

cc: Tom Hutton  
Victoria McCauley

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

EXECUTIVE ORDER N-33-20

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 19th day  
of March 2020.



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GAVIN NEWSOM  
Governor of California

**ATTEST:**

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ALEX PADILLA  
Secretary of State