

Request for Waiver of Tolling Restrictions and for Additional Time to Construct KLCW-TV Incentive Auction Repack Facilities (File No. 0000034587)

Ramar Communications, Inc. (“Ramar”), licensee of digital television broadcast station KLCW-TV, Wolfforth, Texas (the “Station”), hereby seeks an additional 60 days, to and including July 29, 2019, within which to complete construction of the modified Station facilities on Channel 23 authorized by construction permit File No. 0000034587, as extended by File No. 0000063775 (collectively, the “CP”).¹ Because the Station was assigned to Phase 1 of the post-Incentive Auction “repack” of the television band, the CP originally carried an expiration date of November 30, 2018, the Phase 1 completion date. At Ramar’s request and for good cause shown, the Media Bureau of the Federal Communications Commission (the “Commission” or “FCC”) subsequently extended that CP expiration date to May 29, 2019. Due to rare and exceptional circumstances and for good cause shown below, Ramar now seeks waiver of the Commission’s tolling restrictions and grant of an additional 60 days to complete construction of the Station facilities specified in the CP.

By Public Notice dated August 27, 2018,² the Chief of the Commission’s Media Bureau set forth, *inter alia*, the pathway that stations should follow in order to seek and obtain additional time to construct facilities being repacked onto new channels after the conclusion of the FCC’s Incentive Auction in April 2017. Pursuant to 47 C.F.R. § 73.3700(b)(5), repacked stations unable to meet their initial construction deadlines are permitted to seek one 180-day extension of time for good cause shown. Stations needing additional time to construct beyond that one-time extension period are directed to make showings under the Commission’s tolling restrictions set

¹ The 60th day falls on a Sunday, making the requested expiration date Monday, July 29, 2019. See 47 C.F.R. § 1.4(j).

² *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, DA 18-884 (rel. Aug. 27, 2018) (“*Repack PN*”).

forth in 47 C.F.R. § 73.3598(b) or to seek additional time pursuant to a request for waiver of those restrictions due to rare and exceptional circumstances.³

More generally, the FCC may grant a waiver for good cause shown.⁴ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁵ In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁶ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁷

As set forth below, in this case, Ramar meets the Commission's rare and unusual circumstances tolling restriction waiver test, amply justifying FCC grant of this request for waiver and CP extension.

From the beginning, implementation of the government-mandated repack by the end of Phase 1 posed a difficult challenge for the Station for multiple reasons, starting with the fact that Phase 1 did not afford the flexibility of the three-year construction period that is the Commission's long established historical norm.⁸ Indeed, the Station's initial construction period was only slightly more than 16 months in duration (July 24, 2017 to November 30, 2018); with a

³ *Repack PN* at ¶ 13 and n. 34, citing *1998 Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, ¶ 42 (1999) (*Streamlining Order*).

⁴ 47 C.F.R. § 1.3.

⁵ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

⁷ *Northeast Cellular*, 897 F.2d at 1166.

⁸ Ramar notes that, in paragraph 42 of the *Streamlining Order*, the Commission expressly set the “rare and exceptional circumstances” tolling waiver standard against the background of the standard *three-year* construction period for broadcast stations.

grant of the extension requested herein to July 29, 2019, the Station's entire construction period will barely exceed *two* years. As the project has progressed toward completion, new difficulties have arisen, necessitating this further extension request.

Multiple facts confirm that the repack of the Station from RF Channel 43 to RF Channel 23 is a project of unusually broad scope and complexity. The Station will continue to operate post-repack with an antenna that is shared with commonly owned, non-repacked Ramar station KJTV-TV, Lubbock, Texas. The CP authorizes the installation of that shared antenna at the top of a tall tower that measures, with the antenna installed, 975 feet above ground. As is commonly recognized, tall towers make for more difficult, complicated, and risky installations.⁹ That complexity derives in part from transmission line installation specifics. In this case, the project has required the installation of 45 separate 20-foot sections of a rigid 7 3/16" transmission line that connects the transmitter building on the ground with the auxiliary antenna base some 908 feet above ground. Spring hangers and 14 bolts are required for each section. The project's technical complexity is compounded by the Lubbock area weather, where days of moisture, cold, and high winds make tall tower work impossible. Lubbock is 3282 feet above mean sea level (airport elevation), which means that low clouds can bring crew-grounding moisture to the top of the Station tower. Even on good weather days, as the pictures attached hereto illustrate, this installation has involved death-defying work by the tower crew retained by Ramar.¹⁰

⁹ In its tower equipment and rigging costs section, FCC Form 399 recognizes towers above 500' AGL as "tall." *See also* American Tower's *Broadcast Buzz*, Jan. 2019 Edition, at ¶ 8 ("on-tower work requires special skill sets, particularly construction on tall broadcast towers."), available at <https://www.americantower.com/us/news-and-events/broadcast-buzz/January-2019.html>.

¹⁰ The project has even taken a personal toll. Earlier in the project, Ramar's in-house engineer suffered a cracked scapula as a result of a mishap that occurred during delivery of the new transmitter.

Additionally, in late March of this year, Ramar's tower crew suffered vandalism of equipment (damage and theft) located at the tower site. Ramar also experienced delay when the tower crew discovered a need for customized equipment in order to proceed with installation. Furthermore, in finalizing the rigging plan, necessary collaboration with a licensed professional engineer caused delay. As of the second week of April of this year, Ramar had cleared these hurdles and installed the Station's permanent antenna, combiner, and main transmission line. Ramar is now working through a final phase, which depends on delivery of the custom cut transmission line sections and fabricated elbow complexes from the transmission line manufacturer. The dimensions of these final project components could not be identified nor could the components be ordered until the antenna and transmission line were installed. Once that milestone was reached, Ramar tried unsuccessfully to reduce fabrication and installation time by looking for a third party supplier for these parts. But Ramar ultimately found that the only viable alternative was to persuade the transmission line manufacturer to accelerate this process, which Ramar accomplished. Even on this faster timetable, Ramar has yet to receive the final components. Ramar intends to move promptly to complete construction once these parts are on hand.¹¹

In support of this request, Ramar emphasizes another key fact of direct relevance – *the Station transitioned before the Phase 1 completion deadline of November 30, 2018 to interim facilities on its new RF Channel 23*. Therefore, as was true of the Station's initial CP extension, grant of this request will have no cognizable impact on the FCC's overall repack timelines and no detrimental effect on the public interest, while allowing Ramar to complete the KLCW-TV

¹¹ The Station's online LMS filings confirm Ramar's consistent diligence throughout this process. That is, that record shows that to date Ramar has filed 64 Form 399s relating to the KLCW-TV repack, three in 2017, 50 in 2018, and 11 in 2019.

transition in an orderly fashion and continue to provide service to the public through seamless Station operation, without causing interference to or other negative effects on other stations.

The facts and circumstance presented herein amply justify grant of both the waiver of the Commission's tolling restrictions and the modest 60-day CP extension requested herein. Ramar has acted with diligence throughout this process in a good faith effort to meet the most accelerated repack deadline (i.e., the *first* phase) which from the inception was not a reasonable fit for this project's complexity and risk. The Station's showing encompasses nearly all of the factors relevant to Commission consideration of extension requests – installation of a shared antenna on the top of a tall tower, nearly 1000 feet above ground level, complicating weather conditions, vandalism and other unanticipated delays with the tower crew's work and rigging process, and equipment delivery delays that could not be avoided. Despite all of this, Ramar has worked diligently to place itself on the verge of finishing numerous complex sequential tasks in far less time than the three-year period normally allotted for building out a broadcast station construction permit. And, by already transitioning in a timely fashion to its post-repack channel, Ramar has ensured that grant of this request will not adversely impact the Commission's master repack plan.

For all of the foregoing reasons, a waiver of the tolling restrictions and an extension of an additional 60 days to construct the Station's repacked facilities are amply justified. Such relief is respectfully requested.