

**Request for Waiver of Tolling Restrictions and for Additional Time to Construct
KRDK-TV Incentive Auction Repack Facilities (File No. 0000028708)**

Parker Broadcasting of Dakota License, LLC (“Parker”), licensee of digital television broadcast station KRDK-TV, Valley City, North Dakota (Facility ID 49134) (the “Station” or “KRDK”), hereby seeks an additional 180 days, to and including June 15, 2020, within which to complete construction of the modified Station facilities on Channel 24 authorized by construction permit File No. 0000028708, as extended by application File No. 0000074755 (collectively, the “CP”). The Station was originally assigned to Phase 1 of the post-Incentive Auction “repack” of the television band, with a construction completion date of November 30, 2018. At Parker’s separate requests and for good cause shown, the Media Bureau of the Federal Communications Commission (the “Commission” or “FCC”) reassigned the Station to Phase 3 of the repack (with a June 21, 2019 completion date) (*see* File No. 0000063031) and then extended that CP expiration date to December 18, 2019 by granting the application cited above. Due to rare and exceptional circumstances and for good cause shown below, Parker now seeks waiver of the Commission’s tolling restrictions and grant of an additional 180 days to complete construction of the Station facilities specified in the CP.

By Public Notice dated August 27, 2018,¹ 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

¹ *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*”).

extension period are directed to make showings under the Commission's tolling restrictions set 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.²

More generally, the FCC may grant a waiver for good cause shown.³ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁴ 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.⁵ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁶

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

From the beginning, implementation of the government-mandated repack has posed a very difficult challenge for the Station, for multiple reasons. Previous Parker filings relating to the CP have chronicled multiple facts illustrating the reality that the Commission-mandated repack of the Station from RF Channel 38 to RF Channel 24 is a project of unusually broad

² *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*).

³ 47 C.F.R. § 1.3.

⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ *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.

⁶ *Northeast Cellular*, 897 F.2d at 1166.

scope and complexity.⁷ Central among those facts is that the CP authorizes the installation of an antenna near the top of a tower that lays claim to being one of the tallest, if not the tallest, broadcast towers in the United States. It measures 2,060 feet above ground. As is commonly recognized, tall towers (i.e., those more than 500 feet above ground (much less 2,000)) make for more difficult, complicated, and risky installations.⁸

This project's complexity has also been apparent from various factors reported to the Commission in previous Parker filings. Among other things, during the construction period, Parker encountered delays in fabrication of its permanent antenna by a prior vendor, suffered the death of the Station's prior engineer-of-record, and labored under the realities of the sharply weather-truncated construction season in the Fargo, North Dakota area.⁹ It is also the case that, due to the Station's small staff (which includes no in-house engineers), satisfying the many demands of this project has proven particularly challenging for Parker, one of the country's very few minority-owned broadcasters, and one that provides an important independent voice in the

⁷ See, e.g., Request for Extension of Construction Permit, filed June 17, 2019, LMS File No. 0000074755; Request for Modification and Waiver of Phase Assignment, filed Oct. 22, 2018, LMS File No. 00000603031 ("*Phase Assignment Waiver*"). As Parker has previously noted, the Station's repack phase schedule did not afford the flexibility of the three-year construction period that is the Commission's long established historical norm. 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. Even with the change to Phase 3, the single CP extension, and grant of this tolling waiver request to June 15, 2020, the Station's aggregate construction period would not reach the standard three years.

⁸ 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>. See also *Confessions of a Tall Tower Worker*, Radio World, Aug. 15, 2017, available at <https://www.radioworld.com/miscellaneous/confessions-of-a-talltower-worker> (tall tower job skills are very much in demand due to the broadcast spectrum repack).

⁹ See *Phase Assignment Waiver*.

Fargo-Valley City DMA.¹⁰ Now, as the project has progressed toward completion, new difficulties have arisen, necessitating this further extension request.¹¹

Jampro Antennas, Inc. (“Jampro”) has taken a lead position assisting Parker with this project, particularly with respect to equipment fabrication, including the Station’s new permanent antenna, as well as equipment installation, including the critical related task of securing and deploying a tower crew. As it turned out, during the current six-month extension period which ends on December 18, 2019, Jampro’s six-person tower crew was unable to arrive on site in Fargo until October 2, 2019 due in substantial part to a heavy workload occasioned by repack-related work for other television broadcasters. That crew then remained continuously in Fargo for 56 days (eight weeks), or until November 27, 2019, and made substantial, painstaking progress in constructing the Station’s new facilities during that sustained period.¹² Jampro reports that horizontal tower work is now complete, as is vertical work up to 800 feet. As for equipment removal, only the top 100 feet of transmission line and an old antenna have yet to be taken down.¹³ Completion of those tasks will clear the way for installation of the new equipment.

¹⁰ See the Station’s November 29, 2017 FCC Form 397 Broadcast Mid-Term Report, available at <https://publicfiles.fcc.gov/api/service/tv/application/1772618.html>, certifying that the Station has fewer than five full-time employees. In this regard, it bears emphasis that Parker did not voluntarily seek the CP; the demanding project was mandated by the incentive auction repack.

¹¹ The Station’s online LMS filings confirm Parker’s consistent diligence throughout this process. That is, that record shows that to date Parker has filed 29 Form 399s relating to the KRDK repack, three in 2017, seven in 2018, and 19 in 2019.

¹² “Painstaking” is perhaps an understatement that does not adequately describe the onerous work required to, for example, remove nearly 2,000 feet of rigid transmission line from an existing hyper-tall tower like KRDK’s.

¹³ This substantial progress has been made despite a less than safe tower elevator that was damaged during an earlier construction phase, an unforeseen development that still proves expensive and difficult to diagnose and repair.

The tower crew's 56-day stay in Fargo was not without substantial complications. That is, weather-related delays substantially impeded the crew's ability to work, effectively preventing them from completing construction. The crew encountered multiple types of innately hazardous weather conditions during this period of time: high winds, low temperatures, moisture/precipitation (including heavy snowfall), and ice forming on and falling from the tower (particularly at higher tower elevations, e.g., above cloud cover).¹⁴ These weather phenomena, beyond Parker's and Jampro's control, resulted in 13 full and three half days of lost tower crew work within the 56-day period. Without those lost days, Jampro has informed Parker that it believes it would have been at or near completion of construction of the Station facilities within the eight weeks. Now, however, with winter weather effectively in place in the Fargo area, there is no way to complete that construction without an extension of the CP's December 18, 2019 expiration date. Jampro anticipates needing approximately two weeks of cooperating weather to complete construction. That estimate is based in part on the helpful fact that all equipment needed to complete construction is already on site in Fargo. The obvious problem is the seasonal calendar – two continuous weeks of workable construction weather are not likely to occur in Fargo for months, perhaps not until April of 2020, or later.

In support of this request, Parker emphasizes another key fact of direct relevance – *the Station transitioned before the Phase 3 completion deadline of June 21, 2019 to interim facilities on its new RF Channel 24*. 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 (which extend

¹⁴ Attached hereto is a Jampro photo from the KRDK job site that illustrates the vicissitudes of the local weather.

to July 3, 2020), while allowing Parker to complete the KRDK transition and continue to provide service to the public without causing interference to or other negative effects on other stations.¹⁵

The facts and circumstances presented herein amply justify grant of both the waiver of the Commission's tolling restrictions and the 180-day CP extension requested herein. Parker has acted with diligence throughout this process in a good faith effort to meet repack deadlines which from the inception were not a reasonable fit for this project's complexity and risk. The Station's showing herein encompasses many of the factors relevant to Commission consideration of extension requests – installation of an antenna near the top of an extremely tall tower, nearly 2,000 feet above ground level, tower crew unavailability, and some of the harshest complicating weather conditions in the country.¹⁶ Despite all of this, Parker has worked diligently to complete numerous complex sequential tasks in less time than the three-year period normally allotted for building out even a simple broadcast station construction permit project. And, by already transitioning in a timely fashion to its post-repack channel, Parker 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 180 days to construct the Station's repacked facilities are amply justified. Such relief is respectfully requested.

¹⁵ Parker notes that it has strong business incentives to complete construction of its permanent facilities on its new channel at the earliest possible time, to allow transition from the lesser current interim facilities to the advantaged tall tower antenna position.

¹⁶ *See, e.g., Repack PN* at ¶ 12 (citing the following as three of five illustrative circumstances relevant to showings justifying construction permit extensions: “weather related delays,” “delays in construction due to the unavailability of...a tower crew,” and “unusual technical challenges.”). All of these circumstances are present here, and constitute essential components of Parker's showing of rare and exceptional circumstances.

ATTACHMENT

