



Federal Communications Commission  
Washington, D.C. 20554

January 6, 2020

KALO TV, Inc.  
Malala Pou  
P.O. Box 1256  
Honolulu, HI 96807

Re: Request for Tolling Waiver  
KALO, Honolulu, HI  
Facility ID No. 51241  
LMS File No. 0000093168

Dear Licensee,

On December 11, 2019, KALO TV, Inc. (KTI), the licensee of KALO, Honolulu, Hawaii (KALO or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant KTI's request and toll the expiration date of KALO's construction permit to July 1, 2020

*Background.* Pursuant to Section 73.3700(b)(5) of the Commission's rules (Rules), a station that was assigned a new channel as a result of the Commission's incentive auction and repacking process may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.<sup>2</sup> The Commission's tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.<sup>3</sup> If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and tolling may still be warranted where the licensee can demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.<sup>4</sup>

KTI requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities. KALO is currently operating on its post-auction channel with temporary

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</sup> See 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (recognizing that there may be "rare and exceptional circumstances" beyond the control of the licensee that do not fall under the tolling provisions, but "which would warrant the tolling of construction time." The Commission concluded that in such "limited circumstances," it would entertain requests for waiver of its "strict tolling provisions"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

facilities.<sup>5</sup> KALO was previously granted a construction permit extension through December 18, 2019.<sup>6</sup> KTI states that it shares a tower with another repacked station, KKAI, Kailua, Hawaii, and KKAI is managing a majority of the post-auction construction for both stations. As outlined in KKAI's tolling request granted by the Commission on October 29, 2019,<sup>7</sup> KKAI states that it is working with KALO on construction of the new tower, including finalizing a lease with the land owner that has been delayed. In addition, KALO stations that construction has been delayed due to the difficulty accessing the new tower site and obtaining the necessary technical experts and equipment. KALO notes that the Commission already tolled KKAI's construction permit until July 1, 2020, and given that the station's will be co-located, KALO requests that we likewise toll KALO's construction permit until the same date.

*Discussion.* Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station's construction permit to July 1, 2020. KTI has demonstrated it did not complete construction of its post-auction channel facilities due to tower lease negotiations and construction delays on its shared tower site. We also find that grant of KTI's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KALO has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive KALO's signal while it operates using its interim facility, we believe that KTI has every incentive to ensure viewers are fully informed about the Station's transition plan. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind KTI that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."<sup>8</sup> Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, KALO TV, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034872) for KALO, Honolulu, Hawaii **IS TOLLED to July 1, 2020**. Grant of this tolling waiver does not permit KALO to recommence

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<sup>5</sup> See LMS File No. 0000093166. KALO was repacked from channel 38 to channel 18.

<sup>6</sup> See LMS File No. 0000068474.

<sup>7</sup> See LMS File No. 0000086047.

<sup>8</sup> 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

operation on its pre-auction channel. We also remind KTI that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>9</sup>

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara A. Kreisman", with a long, sweeping horizontal stroke at the end.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Anne Goodwin Crump, Esq.

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<sup>9</sup> See 47 § CFR 73.3598(b).