



Federal Communications Commission  
Washington, D.C. 20554

April 7, 2020

Sinclair Portland Licensee, LLC  
Harvey Arnold  
10706 Beaver Dam Road  
Cockeysville, MD 21030

Re: Request for Tolling  
KATU, Portland, OR  
Facility ID No. 21649  
LMS File No. 0000107577

Dear Licensee,

Sinclair Portland Licensee, LLC (Sinclair), the licensee of KATU, Portland, Oregon (KATU or Station), filed the above-referenced request for waiver of the Commission's tolling provisions, tolling and reinstatement of the Station's construction permit. For the reasons below, we grant Sinclair's request, reinstate and toll KATU's construction permit for 120 days to June 17, 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>

Sinclair requests waiver of the tolling rule, reinstatement and tolling of its construction permit for its post-incentive auction channel facilities. KATU is currently operating on its post-auction channel with temporary facilities.<sup>5</sup> KATU was previously granted a construction permit extension through February

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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).

<sup>5</sup> See LMS File No. 000074829. KATU was repacked from channel 43 to channel 24.

18, 2020.<sup>6</sup> Sinclair states the Station has made significant progress in constructing its post-transition facilities, including installation of the Station's permanent antenna and transmission line, and partial installation of the Station's full power post-auction channel transmitter. However, due to the unavailability of transmitter crews and continued work on the Station's combiner, Sinclair reports that the Station has not yet completed all construction. Based on the foregoing, Sinclair requests that the Commission waive its tolling rule, reinstate and toll the KATU construction permit expiration date to June 17, 2020.

*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 June 17, 2020. Sinclair has demonstrated it did not complete construction of its post-auction channel facilities due to limited resources. We also find that grant of Sinclair's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KATU 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 KATU's signal while it operates using its interim facility, we believe that Sinclair 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 Sinclair 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>7</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, Sinclair Portland Licensee, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000033626) for KATU, Portland, Oregon **IS REINSTATED AND TOLLED to June 17, 2020**. Grant of this tolling waiver does not permit KATU to recommence operation on its pre-auction channel. We also remind Sinclair that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>8</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Paul Cicelski, Esq.

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<sup>6</sup> See LMS File No. 0000086819.

<sup>7</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.").

<sup>8</sup> See 47 § CFR 73.3598(b).