



Federal Communications Commission
Washington, D.C. 20554

May 12, 2020

HC2 Station Group, Inc.
Renee Ilhardt
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30th Floor
New York, 10022
rilhardt@hc2broadcasting.com

Re: Request for Tolling Waiver
KAZD, Lake Dallas, TX
Facility ID No. 17433
LMS File No. 0000112551

Dear Licensee,

On April 22, 2020, HC2 Station Group, Inc. (HC2), licensee of Station KAZD, Lake Dallas, Texas (KAZD or Station), filed the above-referenced request for waiver of the Commission's tolling provisions, and reinstatement and tolling of the Station's construction permit expiration date. For the reasons below, we grant HC2's request, reinstate and toll the expiration date of KAZD's construction permit through August 2, 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.¹ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.² 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.³ 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.⁴

¹ See 47 CFR § 73.3700(b)(5).

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

³ *Id.*

⁴ 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).

HC2 requests waiver of the tolling rule and reinstatement and tolling of its construction permit for its post-incentive auction channel facilities through August 2, 2020.⁵ KAZD's construction permit expired on August 2, 2019.⁶ KAZD ceased operations on its pre-auction channel and since July 18, 2019, has been operating on its post-auction channel using an interim facility while it completes construction of its post-auction channel facilities.⁷

HC2 had originally planned to repurpose its existing, pre-transition transmission line, however when it was discovered that the existing transmission line was not supported by the manufacturer of the new antenna. Therefore, Licensee had to identify purchase, and wait for the new antenna transmission line to be manufactured, delivered and installed. Upon receipt of the new line in February 2020, installation was delayed by severe weather. When the weather was deemed safe to continue installation, HC2 states that the tower crew ceased services due to COVID-19 pandemic for several weeks.⁸ Accordingly, HC2 requests that the Commission waive its tolling rule, reinstate and toll KAZD's construction permit expiration date to August 2, 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 reinstate and toll the expiration date of the Station's construction permit. HC2 has demonstrated it will be unable to complete construction of its post-auction channel facilities due to weather and other subsequent installation delays installing the Station's transmission line. We also find that grant of HC2's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KAZD has already ceased operation on its pre-auction channel and is operating an interim facility on its post-auction channel. To the extent some viewers are unable to receive KAZD's signal while it operates its interim facilities, we believe that HC2 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 reinstatement of the Station's construction permit and grant of waiver and tolling of the Station's construction permit.

We remind HC2 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."⁹ Additional expenses incurred, such as

⁵ KAZD was repacked from channel 39 to channel 31.

⁶ See LMS File No. 0000034935. HC2 in its tolling request contends that it was instructed by staff not to file a construction permit extension. HC2 appears to have misunderstood Bureau staff instruction and mistakenly believed that a construction permit extension was not required if it was unable to complete construction of its post-auction facility by August 2, 2019. While a construction permit is not needed in addition to a request for waiver and modification of a station's phase change, to the extent the Station does not complete construction by its newly set phase completion date and automatically extended corresponding construction permit deadline, a construction permit extension is still required. This point was made clear in the Video Division's phase change grant letter. See Letter from Barbra A. Kreisman, Chief, Video Division, Media Bureau to HC2 Station Group, Inc., at 3-4, n. 16 and 17 (Jun. 21, 2020).

⁷ LMS File No. 0000105261.

⁸ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁹ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

expenses resulting from changes in a station's transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, HC2 Station Group, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034935) for KAZD, Lake Dallas, Texas, **IS REINSTATED AND TOLLED to August 2, 2020**. Grant of this tolling waiver does not permit KAZD to recommence operation on its pre-auction channel. We also remind HC2 that any

subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Rebecca Hanson, Esq.

¹⁰ See 47 § CFR 73.3598(b).