

**Request for Waiver of Tolling Restrictions and for Additional Time to Construct
KRDK-TV Incentive Auction Repack Facilities (File Nos. 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 December 12, 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 Nos. 0000074755** (CP extension) and **0000093167** (tolling) (collectively, the “CP”). The Station was originally assigned to Phase 1 of the FCC-mandated, 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) then extended that CP expiration date sequentially to December 18, 2019 and June 15, 2020 by granting the applications cited above. Due to rare and exceptional circumstances and for good cause shown below, Parker now seeks an additional 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

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*”).

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

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"*).

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*.

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.

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 36 Form 399s relating to the KRDK repack, three in 2017, seven in 2018, 19 in 2019, and seven in 2020.

One rare and exceptional circumstance that has arisen during the current six-month extension period expiring on June 15, 2020 is the advent of the COVID-19 pandemic. This international public health crisis directly and negatively impacted multiple aspects of this project and the television industry more generally. Those impacts include curtailing travel options of principals and crew, further compressing their schedules, already crowded due to the national incentive auction-related repack, and adding cascading layers of complication and delay to the ability of workers to safely perform the work required by a project like the Station's move to Channel 24 on a 2,000+ foot AGL tower. Parker notes that the Commission has acknowledged the "fluid and challenging situation caused by the novel coronavirus (COVID-19)" in universally postponing, *sua sponte*, certain filing deadlines of broadcasters.¹²

As previously reported, Jampro Antennas, Inc. ("Jampro") has taken the lead position assisting Parker with this project, particularly with respect to equipment fabrication and installation, including the critical related task of securing and deploying a tower crew amidst a heavy overall workload occasioned by repack-related work for other television broadcasters. Factors cited above (e.g., industry-wide disruption caused by COVID-19 and the short season of good weather in the Fargo area) led Jampro and Parker to identify the end of May as the start of the optimal window of opportunity to complete construction of the CP. Therefore, Jampro's six-person tower crew arrived at the Station tower site on May 27, 2020 to work on the project and has worked continuously on site since that time. Despite the crew's best efforts, however, the project has not yet been completed. That is due in large part to the painstaking, dangerous task of removing all of the transmission line that runs up the facing of the Station's massive tower,

¹² *Media Bureau Announces Extension of Time for Broadcasters to File Children's Programming Reports and Quarterly Issues/Programs Lists*, Public Notice, DA 20-353 (rel. Mar. 27, 2020).

and then installing/securing the new transmission line that retraces the same path skyward.¹³

The crew also found upon arrival at the site that it had to restore tower rigging. In addition, if the crew is to work safely, even in warmer weather, they must take into account weather factors like high winds and rain, which cost them five full and several partial work days since May 27. The totality of these complicating factors has made completion of this project take considerably more time than Jampro projected after its crew spent 56 days at the Station site last autumn.

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 and previously granted waiver of tolling restrictions, grant of this request will have no cognizable impact on the FCC’s overall repack plan, 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.¹⁴

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 in a manner consistent with 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

¹³ “Painstaking” is perhaps an understatement that does not adequately describe the onerous work required to remove from, and install on, an existing hyper-tall tower like KRDK’s nearly 2,000 feet of transmission line.

¹⁴ Parker notes that it continues to have 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.

level, tower crew unavailability, and complicating weather conditions.¹⁵ Despite all of this, Parker has worked diligently to complete numerous complex sequential tasks 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 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.