



Federal Communications Commission
Washington, D.C. 20554

November 6, 2020

Paradise (KCVU-TV) Licensee, Inc.
Lisa Asher
2000 West, 41st Street
Baltimore, MD 21211
LAsher@cunninghambroadcasting.com
(via electronic mail)

Re: Request for Tolling Waiver
KCVU(TV), Paradise, CA
Facility ID No. 58605
LMS File No. 0000124987

Dear Licensee,

On October 23, 2020, Paradise (KCVU-TV) Licensee, Inc. (PLI), the licensee of Station KCVU(TV), Paradise, California (KCVU or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit. For the reasons below, we grant PLI's waiver request and toll KCVU's construction permit through April 26, 2021.

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

PLI requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to April 26, 2021. KCVU is currently operating on its post-auction channel

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).

using an interim facility while it completes construction of its post-auction channel facilities.⁵ KCVU was previously granted a construction permit extension through October 28, 2020.⁶

PLI states that the KCVU tower site is in an area of mountainous terrain, and installation of the station's post-auction channel facilities was previously delayed due to issues with weather, equipment delivery and tower crew availability. More recently, PLI reports that there has been unexpected reported interference to land mobile radio (LMR) operations in the San Francisco area from the Station's operation on its channel 17 facilities. To resolve these interference issues, KCVU has filed and we are simultaneously granting an application for a major modification of its construction permit which would allow the Station to operate on channel 30,⁷ and the Station has also been granted special temporary authority (STA) to operate on channel 30.⁸ PLI states that the post-auction channel transmitter for KCVU has been installed, and KCVU is currently using that transmitter and an interim antenna to broadcast at low power on channel 17. Because of the time involved in the manufacture and delivery of a permanent post-auction channel antenna to operate on channel 30, PLI requests tolling of the Station's construction permit through April 26, 2021.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of the Station's construction permit through April 26, 2021.⁹ PLI has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays and unexpected interference to LMR operations. We also find that grant of PLI's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KCVU 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 KCVU's signal while it operates using its interim facility, we believe that PLI 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 tolling of the Station's construction permit.

We remind PLI 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."¹⁰ 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.

⁵ See LMS File No. 0000124988. KCVU was repacked from channel 20 to channel 17.

⁶ See LMS File No. 0000112836.

⁷ See LMS File No. 0000122335.

⁸ See LMS File No. 0000124988.

⁹ 47 CFR § 73.3598(b).

¹⁰ 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) (*Incentive Auction R&O*), aff'd, *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

We further remind PLI of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.¹¹ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, and we encourage PLI to submit eligible invoices as soon as practicable.

The above facts considered, Paradise (KCVU-TV) Licensee, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000122335) for KCVU(TV), Paradise, California, **IS TOLLED to April 26, 2021**. Grant of this tolling waiver does not permit KCVU to recommence operation on its pre-auction channel. We also remind PLI that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹²

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic email):
Paul Cicelski, Esq.
Scott R. Flick, Esq.

¹¹ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306, GN Docket No. 12-268, Public Notice, DA 20-1171, para. 10 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

¹² See 47 CFR § 73.3598(b).