



Federal Communications Commission
Washington, D.C. 20554

January 25, 2021

Kingdom Broadcasting, Inc.
Duane Amis
923 East Hillsboro
El Dorado, AR 71730
duaneamis@juno.com
(via electronic mail)

Re: Request for Tolling Waiver
KLMB-CD, El Dorado, AR
Facility ID No. 38585
LMS File No. 0000131312

Dear Licensee,

Kingdom Broadcasting, Inc. (KBI), the licensee of KLMB-CD, El Dorado, Arkansas (KLMB-CD or Station), filed the above-referenced request, as amended, for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant KBI's request and toll the expiration date of KLMB-CD's construction permit through July 3, 2021.¹

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.² All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.³ 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.⁴ 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.⁵

¹ KBI originally filed a request to extend its construction permit deadline using the incorrect application. That application has been dismissed. See LMS File No. 0000130209. The instant tolling request was filed on January 14, 2021. To the extent necessary we also reinstate the Station's construction permit.

² See 47 CFR § 73.3700(b)(5).

³ See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

⁴ *Id.*

⁵ 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

KBI requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities. KLMB-CD has been granted a construction permit extension and its construction permit was extended to December 30, 2020.⁶ KLMB remains silent while KBI completes construction of the Station's post-auction channel facilities.⁷

KBI states that, for several months, it has been negotiating with the owner of the Station's tower to finalize tower arrangements. KBI states that the tower owner's attorney has instructed KBI not to place any new equipment on the tower. In addition, KBI states that the arrival of the Station's antennas was delayed due to the COVID-19 pandemic. KBI states that once construction is able to proceed at the tower site, the engineer estimates it will take 10-12 weeks to complete the project. Based on the foregoing, KBI requests that the Commission waive its tolling rule and toll the KLMB-CD construction permit expiration 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 through July 3, 2021.⁸ KBI has demonstrated it has been unable to complete construction of its post-auction channel facilities due to issues securing access to its tower and other construction delays. We also find that grant of KBI's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KLMB-CD has already ceased operation on its pre-auction channel and is silent. To the extent viewers are unable to receive KLMB-CD's signal while it is silent, we believe that KBI 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 KBI 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 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.

We further remind KBI of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.¹⁰ Thus, we strongly encourage the Station to diligently

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).

⁶ LMS File No. 0000117625. KLMB-CD was repacked from channel 36 to channel 23.

⁷ See LMS File No. 0000117717.

⁸ 47 CFR § 73.3598(b).

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) (*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.").

¹⁰ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (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

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 KBI to submit eligible invoices as soon as practicable.

The above facts considered, Kingdom Broadcasting, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000025341) for KLMB-CD, El Dorado, Arkansas, **IS TOLLED through July 3, 2021**. Grant of this tolling waiver does not permit KLMB-CD to recommence operation on its pre-auction channel. We also remind KBI that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹¹ To the extent the Station seeks additional extensions of tolling and silent authority, such a request must include a detailed plan for bringing the station back to operational status.¹² We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division Media Bureau

period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

¹¹ See 47 CFR § 73.3598(b).

¹² We note that pursuant to section 312(g) of Communications Act of 1934 (Act) provides that "[i]f a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license . . . for any reason to promote equity and fairness." 47 U.S.C. § 312(g). The Commission has said it would consider cases where stations were forced to remain dark for more than 12 months by the repack process. *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6807, para. 585 (2014). As such, to the extent the Station remains silent, its license will automatically expire at 12:00 AM on July 4, 2021, absent a request for extension pursuant to the equity and fairness provision of section 312(g). If necessary, KBI should file such a request as part of any extension of its silent authority.