



Federal Communications Commission
Washington, D.C. 20554

May 24, 2021

Sinclair Portland Licensee, LLC
Harvey Arnold
10706 Beaver Dam Road
Cockeysville, MD 21030
FCCContacts@sbgstv.com
(via electronic mail)

Re: Request for Tolling Waiver
KATU(TV), Portland, OR
Facility ID No. 21649
LMS File No. 0000146407

Dear Licensee,

On May 20 2021, Sinclair Portland Licensee, LLC (Sinclair), the licensee of Station KATU(TV), Portland, Oregon (KATU 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 Sinclair's waiver request and toll KATU's construction permit through September 7, 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 Because the date requested by Sinclair for extension of its construction permit falls on a Federal holiday, Labor Day, September 6, 2021, we will extend the construction permit to the next business day, which would be Tuesday, September 7, 2021. See 47 CFR § 1.4.

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 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).

Sinclair requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through September 7, 2021. KATU has been granted a construction permit extension and multiple tolling waivers and its construction permit was most recently extended to June 8, 2021.⁶ KATU is currently operating on its post-auction channel with an interim facility.⁷

Sinclair states that the Station has made significant progress in constructing its post-auction channel facilities, including installation of the Station's permanent antenna and transmitter. However, ongoing RF issues involving the combiner have continued to prevent the Station from operating at full power. Sinclair explains that work on the combiner was delayed because of the need to have the combiner redesigned by the manufacturer and restrictions related to the COVID-19 pandemic. Sinclair states that the installation of the new combiner is currently scheduled for mid-June 2021. The combiner will be serving three different stations, including KATU, and due to the complexity of the combiner and the technical issues which may result, Sinclair estimates that it will take an additional period of up to 90 days before the new combiner can be installed, tested, and is fully operational. Based on the foregoing, Sinclair requests that the Commission waive its tolling rule and toll the KATU construction permit expiration through September 7, 2021.

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 September 7, 2021.⁸ Sinclair has demonstrated it has been unable to complete construction of its post-auction channel facilities due to construction and equipment delays. 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 is operating from an interim facility 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 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."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.

⁶ LMS File Nos. 0000086819, 0000107577, 0000115919, 0000124566, 0000130748 and 0000137996. KATU was repacked from channel 43 to channel 24.

⁷ See LMS File No. 0000146409.

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.").

We further remind Sinclair 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 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 Sinclair to submit eligible invoices as soon as practicable.

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(TV), Portland, Oregon, **IS TOLLED to September 7, 2021**. 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.¹¹ To the extent the Station seeks an additional extension of tolling, such a request must include a detailed plan for completing construction of the Station's permanent post-auction facilities. 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

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

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 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).

¹¹ See 47 § CFR 73.3598(b).