

**Request for Extension of Deadline to Submit Invoices for Reimbursement  
from TV Broadcaster Relocation Fund**

Kailua Television, LLC (“KTL”), licensee of KKAI(TV), Kailua, Hawaii (Facility ID 83180), hereby requests that the Incentive Auction Task Force (“Task Force”) and Media Bureau (“Bureau”) reassign KKAI from the first deadline for stations to submit invoices for reimbursement from the TV Broadcaster Relocation Fund (October 8, 2021), to the second deadline (March 22, 2022). Good cause exists to shift KKAI’s reimbursement deadline because, despite KTL’s diligent efforts, KKAI only recently began operating on its licensed facilities due to circumstances that the Commission has recognized are beyond KTL’s control. KTL needs additional time to complete certain repack-related projects and submit its final requests for reimbursement. Shifting KKAI’s deadline will provide KTL with the additional time it needs in light of the unique circumstances it has faced while imposing at most a minor inconvenience upon the Commission.

**I. Background**

KKAI is one of five Hawaiian television stations assigned to a new channel in the post-incentive auction repack (together with KALO, KITV, KPXO-TV, and KWBN). In connection with the *Channel Closing and Reassignment Public Notice*, the FCC assigned KKAI to Repack Phase 2, with a phase completion date of April 12, 2019.<sup>1</sup> The FCC recognized that KKAI operated a two-site DTS and assigned KKAI to relocate both sites from channel 50 to channel 25.<sup>2</sup>

KTL timely filed an application for a construction permit for KKAI’s post-auction facilities on July 12, 2017.<sup>3</sup> Given the resource and permitting challenges associated with constructing television stations in Hawaii, KTL, in consultation with FCC staff, Hawaiian elected officials, and the other affected stations, initially sought to design a site from which all five repacked stations (along with displaced Class A station, KHLU-CD) could operate. Over time, however, the stations decided to develop their own construction plans (or, in the case of KHLU-CD, to relinquish its license).

KTL, meanwhile, determined that the initial DTS facilities assigned by the FCC would have resulted in significant interference issues with KLEI-TV, which already operated on channel 25. Accordingly, on November 2, 2017, KTL filed an application for a major modification to change KKAI’s channel assignment to channel 29.<sup>4</sup> The Commission granted that application, but not until more than nine months had passed and fewer than eight months remained before the Phase 2 completion date. On March 14, 2019, KTL filed an application for an engineering STA for its interim channel 29 facilities,<sup>5</sup> after which KTL requested a 180 day extension of KKAI’s construction permit, explaining that due to the remote nature of the site, it was difficult to move the necessary equipment and vehicles.<sup>6</sup> The

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<sup>1</sup> See FCC, Post Incentive Auction Television Transition Data Files: Phase Assignment, [https://data.fcc.gov/download/incentive-auctions/Transition\\_Files/Phase\\_Assignment\\_Closing\\_PN.csv](https://data.fcc.gov/download/incentive-auctions/Transition_Files/Phase_Assignment_Closing_PN.csv).

<sup>2</sup> See FCC, Post Incentive Auction Television Transition Data Files: Post-Auction Technical Parameters, [https://data.fcc.gov/download/incentive-auctions/Transition\\_Files/Post\\_Auction\\_Parameters.xlsx](https://data.fcc.gov/download/incentive-auctions/Transition_Files/Post_Auction_Parameters.xlsx).

<sup>3</sup> File No. 0000028639.

<sup>4</sup> File No. 0000034832.

<sup>5</sup> File No. 0000068511.

<sup>6</sup> File No. 0000068546.

Commission granted both applications, recognizing “the evolving nature and uncertainty surrounding KTL’s construction plans.”<sup>7</sup>

At that time, KTL was continuing to work with another station on a shared facility. However, the other party experienced delays negotiating a lease. KTL, for its part, was having difficulty procuring the necessary equipment and transporting it to the sites. Accordingly, on October 10, 2019, KTL submitted a request for tolling of KKAI’s construction permit.<sup>8</sup> In granting KTL’s request, the Commission found that “KTL has demonstrated that it did not complete construction of its post-auction channel facilities due to tower lease negotiations and construction delays.” In an attempt to expedite the construction of KKAI’s post-auction facilities, KTV applied to convert KKAI from a DTS to a single transmitter even though that meant potentially sacrificing some of KKAI’s signal coverage.<sup>9</sup>

On July 2, 2020, the Commission granted KTL’s request for a further waiver of the Commission’s tolling provisions and tolling of KKAI’s construction permit expiration date.<sup>10</sup> In granting the request, the Media Bureau acknowledged that KTL “did not complete construction of its post-auction channel facilities due to construction delays.” The Media Bureau further found that “grant of KTL’s waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations.”

The Covid-19 pandemic created particular problems for KKAI’s repack plans. Hawaii imposed some of the most stringent restrictions in the country to prevent the spread of COVID-19. Specifically:

- On March 17, 2020, Governor David Y. Ige announced a direction for high-risk individuals (including KTV’s manager and chief engineer) to stay at home, a limit on social gatherings, and a prohibition on discretionary travel.<sup>11</sup>
- Despite the critical importance of tourism to Hawaii’s economy, on March 21, 2020, Governor Ige announced that all persons traveling to Hawaii (whether residents or visitors) were required to self-quarantine for 14 days.<sup>12</sup> During the quarantine period, individuals and visitors were not permitted to leave their quarantine location for any reason other than medical emergencies or to seek medical care, subject to penalty of a fine up to \$5,000, imprisonment for up to one year, or both.
- On March 23, 2020, Governor Ige issued a widespread stay-at-home order, prohibiting non-essential workers from leaving their home other than for healthcare, purchasing food, medicine and gasoline, taking care of the elderly, minors, and those with disabilities, returning to a place

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<sup>7</sup> See Letter from Barbara A. Kreisman, Chief, Media Bureau to Kailua Television, LLC (Sept. 17, 2019).

<sup>8</sup> File No. 0000086047.

<sup>9</sup> File No. 0000105110.

<sup>10</sup> See Letter from Barbara A. Kreisman to Kailua Television, LLC (July 2, 2020), LMS File No. 0000115933.

<sup>11</sup> See Press Release, Hawaii Governor David Y. Ige, *Gov. Ige Announces State Actions to Slow the Spread of COVID-19* (Mar. 17, 2020), available at <https://governor.hawaii.gov/newsroom/latest-news/proper-use-of-covid-19-tests-imperative-there-is-a-current-shortage-of-hand-sanitizers-and-toilet-paper-in-hawaii-in-part-because-of-the-publics-over-reaction-to-covid-19-the-hawaii/>.

<sup>12</sup> See Press Release, Hawaii Governor David Y. Ige, *Gov. Ige Orders Mandatory 14-Day Quarantine for All Individuals Arriving or Returning to the State of Hawai’i* (Mar. 21, 2020), available at <https://governor.hawaii.gov/newsroom/latest-news/governors-office-news-release-gov-ige-orders-mandatory-14-day-quarantine-for-all-individuals-arriving-or-returning-to-the-state-of-hawaii%ca%bbi/>.

of residence outside of Hawai'i, picking up educational materials for distance learning, receiving meals and any other related services, and outdoor exercise.<sup>13</sup>

- On March 31, 2020, Governor Ige issued an order requiring residents and visitors traveling between any of the islands in the State of Hawaii to self-quarantine for 14 days.<sup>14</sup>

Many of Hawaii's restrictions remained in place for over a year, and Hawaii enforced them aggressively, putting out wanted bulletins and arresting tourists and others who failed to abide by the quarantine orders.<sup>15</sup> These restrictions and the general slowdown in travel due to COVID-19 resulted in a reduction in cargo capacity to Hawaii.<sup>16</sup> These restrictions prevented KTL from transporting engineers, installers, and equipment into Hawaii and also restricted the ability of KTL's personnel and contractors already in Hawaii to access the transmission facilities.

Covid-19 restrictions also magnified otherwise routine issues. For example, the transmitters that KTL had ordered for KKAI were configured incorrectly and required manual adjustments. Typically, the manufacturer would have sent a technician to Hawaii to make the necessary adjustments on site. However, due to Covid-related restrictions, KTL has to ship the transmitters back to the manufacturer to make the necessary adjustments and then re-ship the transmitters to Hawaii. KTL also had to fly installers from the transmitter manufacturer to California and back due to ongoing Covid restrictions in Hawaii.

In consideration of these challenges, the FCC granted two additional requests to toll KKAI's construction permit, finding each time that sufficient circumstances existed to waive the rules and toll the expiration date.<sup>17</sup> On August 25, 2021, KTL filed its License to Cover for KKAI.<sup>18</sup> Although KKAI is finally operating with its licensed parameters, additional work remains to be completed: for instance, generators must be installed at each of the DTS sites, temporary cooling systems must be replaced with permanent air conditioning systems, and final on-site proofing of the transmitters must be completed. While KTL is working diligently to complete this additional work as soon as possible, it expects that this work will

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<sup>13</sup> See Press Release, Hawaii Governor David Y. Ige, *Governor Ige Issues Statewide Order to Stay at Home, Work from Home to Fight COVID-19* (Mar. 23, 2020), available at <https://governor.hawaii.gov/newsroom/latest-news/office-of-the-governor-news-release-governor-ige-issues-statewide-order-to-stay-at-home-work-from-home-to-fight-covid-19/>.

<sup>14</sup> See Press Release, Hawaii Governor David Y. Ige, *Governor Ige Issues Emergency Order Requiring Self-Quarantine for Inter-Island Travelers* (Mar. 31, 2020), available at <https://governor.hawaii.gov/newsroom/latest-news/office-of-the-governor-news-release-governor-ige-issues-emergency-order-requiring-self-quarantine-for-inter-island-travelers/>.

<sup>15</sup> See Hannah Sampson, *Hawaii Isn't Messing Around When It Comes to Enforcing Tourist Quarantines*, Washington Post (May 20, 2020), available at <https://www.washingtonpost.com/travel/2020/05/20/hawaii-isnt-messing-around-when-it-comes-enforcing-tourist-quarantines/>; News Release, *College Student Arrested for Quarantine Violation*, Hawai'i State Department of Health (June 1, 2020), available at <https://hawaiiicovid19.com/college-student-arrested-for-quarantine-violation/>.

<sup>16</sup> See Ryan Finnerty, Hawaii Public Radio, *Air Shipping Costs Spike for Goods Coming to Hawaii* (Apr. 16, 2020), <https://www.hawaiipublicradio.org/post/air-shipping-costs-spike-goods-coming-hawaii#stream/0>.

<sup>17</sup> File Nos. 0000129460; 0000150612.

<sup>18</sup> File No. 0000157950.

continue well into October, if not later. KTL's ability to complete this work will be further delayed if additional Covid-related restrictions currently under consideration are imposed.<sup>19</sup>

## **II. The Commission Should Shift KKAI's Reimbursement Deadline to March 22, 2022**

Because KTV, due to circumstances beyond its control, did not complete construction of KKAI's post-transition facilities until well after the phase 10 deadline, the FCC should shift KKAI's reimbursement deadline to correspond to stations in the latter half of the repack. In their August 9, 2021 Public Notice, the Task Force and the Bureau indicated that they "will consider a limited extension" of a station's reimbursement deadline where an entity faces circumstances beyond its control.<sup>20</sup> In such circumstances, the Task Force and the Bureau indicated that they will "shift[] an entity with the first or second deadline assignment to the second or third deadline assignment." The instant circumstances warrant such an approach.

Under the deadlines adopted by the Task Force and the Bureau, stations that were assigned to the first five phases of the Transition Scheduling Plan (and, therefore, were scheduled to complete construction by September 6, 2019) were assigned to submit all of their invoices by October 8, 2021.<sup>21</sup> In adopting this phased approach, the Task Force and the Bureau explained that "repacked stations with phase assignments earlier in the transition period were more likely to have completed their transition to final facilities, completed all construction, and incurred all costs."<sup>22</sup> Stations that were granted permission to change phases, meanwhile, were assigned to the deadline associated with their revised phase completion date.<sup>23</sup>

Here, although the FCC initially assigned KKAI to Phase 2, a number of factors made transitioning to KKAI's final facilities by the Phase 2 deadline impossible, including the delay in granting KKAI's channel change application (which was not granted until fewer than eight months remained before the Phase 2 completion date), issues with permitting and transporting heavy equipment to the protected areas where KKAI's transmission facilities are located, and challenges associated with KTL's failed attempt to coordinate construction for the five repacked Hawaiian stations. Covid-19 related shutdowns further impacted KTL's ability to complete construction of KKAI's post-transition facilities.

Although the FCC did not formally change KKAI's phase assignment, it repeatedly extended KKAI's construction deadline until well after the Phase 10 completion date—each time recognizing that "rare and exceptional circumstances" beyond KTL's control prevented KKAI from completing its final facilities.<sup>24</sup> KKAI's final construction deadline – August 31, 2021 –was less than 45 days before the first submission deadline.

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<sup>19</sup> See Hawaii New Now, *Governor dismisses lockdown rumors, but counties warn more restrictions are on the way* (Aug. 30, 2021), <https://www.hawaiinewsnow.com/2021/08/30/governor-dismisses-lockdown-rumors-counties-say-more-restrictions-are-way/>.

<sup>20</sup> See *TV Broadcaster Relocation Fund Filing Deadline Approaches in Sixty Days*, Public Notice, DA-21-970 (rel. Aug. 9, 2021) ("60 Day Notice").

<sup>21</sup> See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, Public Notice, 35 FCC Rcd 11273 (MB/IATF 2020) ("Invoice Filing Deadline PN").

<sup>22</sup> 60 Day Notice, n.9.

<sup>23</sup> *Id.* n.2.

<sup>24</sup> See 1998 Biennial Regulatory Review -- *Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd. 17525 ¶ 42 (1999) (recognizing that there may be "rare and

KTL is working diligently to submit all credit memos and invoices for expenses it has incurred as of this writing before the October 8 deadline. However, a number of items remain to be completed, including the installation of generators at each of the DTS sites, installation of necessary air conditioning systems, and final on-site proofing of the transmitters. This work will likely extend beyond October 8, 2021.

Meanwhile, if KTL cannot rely on its vendor, Widelity, to continue managing the reimbursement process, it will need to incur additional costs and delays to transition those services to another service provider.

Applying the October 8, 2021 invoice submission deadline to KKAI under these circumstances is not in the public interest. While this deadline was appropriate for the many stations in Phases 1-5 that were able to transition to their final facilities on or near their assigned deadlines, it does not make sense for a station like KKAI, which only recently transitioned to its final facilities and is still completing several essential repack-related projects. The burden to the Commission of shifting KKAI's deadline, meanwhile, should be minimal given that KKAI is apparently one of just 23 stations that was not operating from its final facilities as of August 9, 2021.<sup>25</sup> Given the harm to KTL of enforcing a deadline that does not account for KKAI's circumstances and its ongoing repack efforts, it would be unreasonable and inconsistent with Congress's charge for the FCC to reimburse costs "reasonably incurred" in the repack<sup>26</sup> to require KTL to submit all invoices for KKAI before October 8, 2021.

### **III. Conclusion**

KTV is working diligently to complete all repack-related work on KKAI and submit all invoices as soon as possible. However, because KTV is unlikely to have completed all reimbursable work for KKAI by October 8, 2021 due to reasons beyond its control, KTV cannot complete the submission of its invoices by that date. Accordingly, the Task Force and Bureau should shift KKAI to the second deadline and require KTV to submit its invoices by March 22, 2022.

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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").

<sup>25</sup> See 60 Day Notice, ¶ 3. The FCC did not specify how many of the stations that had not completed construction were assigned to the first submission deadline.

<sup>26</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. Law 112-96, § 6403(b)(4).