



Federal Communications Commission
Washington, D.C. 20554

October 15, 2021

LR Telecasting, LLC
Ridge Lake Office Bld #304
855 Ridge Lake Blvd
Memphis, TN 38120
whpollack@gmail.com
(via electronic mail)

Re: Request for Tolling Waiver
KMYA-DT, Camden, AR
Facility ID No. 86534
LMS File No. 0000158160

Dear Licensee,

On August 30, 2021, LR Telecasting, LLC (LR), the licensee of KMYA-DT, Camden, Arkansas (KMYA or Station), filed the above-referenced request for waiver, as amended, of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant LR's request and toll the expiration date of KMYA's construction permit through November 30, 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

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).

LR requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through November 30, 2021. KMYA has been granted a construction permit extension and multiple waivers of the tolling rule and its construction permit was most recently tolled to August 31, 2021.⁵ KMYA is currently operating on its post-auction channel at reduced power.⁶

Licensee states that all work required for the Station's post-auction channel facilities has been completed except for the final testing of the Station's transmitter. In August 2021, the transmitter manufacturer's team began testing the transmitter's water-cooling system and detected water leaks in the heat exchanger and outside plumbing components. The parties determined that the heat exchanger was damaged and a new one would have to be secured. Licensee initially believed that the heat exchanger could be delivered in 4 to 5 weeks, but the equipment supplier recently notified Licensee that its supplier's original shipping date had changed and that a new delivery date cannot be precisely fixed due to unprecedented, global supply chain bottlenecks.⁷ Licensee states that the best estimate is that the equipment will be delivered and installation of the transmitter will occur sometime in November 2021.⁸ Based on the foregoing, LR requests that the Commission waive its tolling rule and toll the KMYA construction permit expiration date to November 30, 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 to November 30, 2021.⁹ LR has demonstrated it did not complete construction of the Station's post-auction channel facilities due to a last-minute equipment failure. We also find that grant of LR's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Station has already ceased operation on their pre-auction channels and is operating from interim facilities on its post-auction channel. To the extent some viewers are unable to receive the Station's signal while it operates using interim facilities, we believe that LR has every incentive to ensure viewers are fully informed about the Station's transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind LR 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 LMS File Nos. 0000072858, 0000063557, 0000072858, 0000081968, 0000090345, 0000106831, 0000113814, 0000120818, 0000127674, 0000133199, 0000144183 and 0000151105. KMYA was repacked from channel 49 to channel 18.

⁶ See e.g., LMS File No. 0000158161.

⁷ See LMS File No. 0000160980.

⁸ *Id.*

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 LR that the deadline for submitting final expense documentation for reimbursement for the Station is currently March 22, 2021.¹¹ We strongly encourage the Station to diligently pursue satisfaction of its assigned submission deadline to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, and we encourage LR to submit eligible invoices as soon as practicable.

The above facts considered, LR Telecasting, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000028486) for KMYA-DT, Camden, Arkansas, **IS TOLLED through November 30, 2021**. Grant of this tolling waiver does not permit KMYA to recommence operation on its pre-auction channel. While we anticipate this will be LR's final request for tolling, we remind LR that any subsequent tolling requests will be subject to the Commission's tolling provisions.¹² 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): Ronald Maines, Esq.

¹¹ The Station was granted an extension of the October 8, 2021 invoice submission deadline and the Station's deadline was extended to March 22, 2022. *See* LMS File No. 0000160980. *See also 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).

¹² *See* 47 CFR § 73.3598(b). A station may also seek a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" prevent construction. *See 1998 Regulatory Review - Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17536, para. 42 (1999).