

Tolling Request of Construction Permit File No. 0000151660

KATN and KJUD License, LLC (“Licensee”) licensee of low power television station K13KU, Delta Junction, Alaska, herein requests, pursuant to Section 73.3598(b) of the FCC’s rules, that the construction permit to construct digital facilities for the Station be tolled (the “Digital CP”). This request is necessary due to a combination of severe weather, supply chain issues arising as a result of the COVID-19 pandemic, and administrative delays in obtaining site access controlled by the City Manager of Delta Junction. Alternatively, Licensee requests waiver of Section 73.3598 and tolling of the expiration of Digital CP due to “rare and exceptional circumstances.”

A permittee of an LPTV station may seek additional time to construct a station’s facilities pursuant to a request for waiver of the tolling standard under Section 73.3598(b) of the Commission’s rules upon a showing of “rare and exceptional circumstances . . . beyond [the permittee’s] control.”¹ The Commission may grant a waiver for good cause shown.² A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.³ In considering a waiver, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁴ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁵ As explained below, such special, rare, and extraordinary circumstances exist in the present case.

Licensee applied for the Digital CP, as well as extension of the expiration of such permit until January 10, 2022, in July 2021. As explained in the application for the Digital CP, the Licensee had made good faith efforts to convert the Station to digital operation, but was significantly hampered in those efforts by difficulties in obtaining engineering services, equipment and crews, first by the repacking of full-power television stations, and then by the impact of the COVID-19 pandemic. At that time, Licensee anticipated that it would be able to complete construction during late summer 2021, prior to the onset of severe winter weather at the Station’s transmission site in remote Alaska. Unfortunately, due to rare and exceptional circumstances beyond its control, it has been unable to do so. Subsequent to a recent City-funded renovation of the site Licensee’s has learned that its access to the site will be highly restricted by access coordination required by the City Manager of Delta Junction, who must accompany Licensee’s personnel to the site. The City Manager only recently informed Licensee of these restrictions and that she may be unable to accommodate access for purposes of construction of the facility until late March or early April 2022.

The facility approved in the Digital CP is to be constructed at a tower located outside of Delta Junction, approximately 90 miles southeast of Fairbanks in rural interior Alaska. Winter conditions at the site are brutal, with temperatures frequently below zero and high winds. On December 16, 2021, for example, the high temperature was -5 degrees Fahrenheit with winds of

¹ See 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes, Memorandum Opinion and Order, 14 FCC Rcd. 17525, 17541, ¶ 42 (1999).

² 47 C.F.R. § 1.3.

³ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

⁵ *Northeast Cellular*, 897 F.2d at 1166.

23 miles per hour gusting above 30 miles per hour. Anticipating such conditions, Licensee nevertheless undertook diligent efforts to acquire the necessary equipment to construct the Digital CP immediately after grant of the Digital CP in an effort to build far ahead of the onset of winter weather. Licensee has experienced significant delays in delivery of equipment due to the widespread supply chain delays occasioned by the COVID-19 pandemic. As a result of these unanticipated and exceptional delays, Licensee did not take delivery of all necessary equipment until December 1, 2021, after the arrival of winter weather at the Digital CP site, which this year occurred in Mid-November.

Nevertheless, Licensee has attempted to coordinate access to the Digital CP site with the City Manager after receiving the necessary equipment, but, as discussed above, has learned that it may not gain such access until March or April 2022. The City Manager will not allow Licensee to access the site without escort. Due to the remote location of Delta Junction, as well as continuing impacts of the COVID-19 pandemic, the City Manager has extremely limited staff who could provide this service, particularly under the severe weather conditions currently impacting the site.

Licensee respectfully submits that the circumstances set forth above justify tolling of the Digital CP pursuant to Section 73.3598(b), as the Licensee's inability to complete construction has been caused by a combination of the COVID-19 pandemic and inability to receive local administrative approval necessary to enable construction. Should the Commission find that tolling does not lie under these circumstances, Licensee respectfully requests, in the alternative, that the FCC waive Section 73.3598 and toll the expiration of the Station's Digital CP in light of the unique circumstances presented. Good cause exists to waive Section 73.3598 and toll the expiration of the Digital CP as requested herein.

Based on the foregoing, Licensee requests that the Digital CP be tolled pursuant to Section 73.3598(b), or that the FCC waive Section 73.3598 and toll the expiration of Digital CP for a period of five months, through June 10, 2022, to allow sufficient time for winter weather to resolve and allow site access coordination with the City Manager.