



Federal Communications Commission
Washington, D.C. 20554

January 28, 2022

Gray Television Licensee, LLC
4370 Peachtree Road, NE
Atlanta, GA 30319
robert.folliard@gray.tv
(via electronic mail)

Re: Request for Tolling Waiver
KKTМ-LP, Altus, OK
Fac ID No. 130241
LMS File No. 0000177866

Dear Licensee,

This concerns a request for waiver of the Commission's tolling provisions and tolling of digital construction permit expiration date (Request), as amended, filed by Gray Television Licensee, LLC (Gray), licensee of low power television station KKTМ-LP, Altus, Oklahoma (KKTМ-LP or Station). For the reasons below, we grant Gray's Request and toll the expiration date of the Station's digital construction permit to March 11, 2022.

Background. Requests for additional time to construct low power television facilities are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.¹ 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.² 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.³

Request For Tolling Waiver. KKTМ-LP is a low power television that operated on analog channel 17. The Station's analog 17 operations were displaced by the Incentive Auction and repacking process and the Station's application for construction permit for digital displacement channel 21 was granted on September 27, 2018 (Displacement CP).⁴ Because the Station was still operating in analog at the time, the Displacement CP was given an expiration date of July 13, 2021.⁵ A construction permit

¹ See 47 CFR § 73.3598(b).

² *Id.*

³ 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) (*Streamlining MO&O*) (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).

⁴ See LMS File No. 0000054101 as modified by LMS File No. 0000160744.

⁵ See 47 CFR § 74.788(a).

extension application (Extension Application) was filed by Gray and granted on June 17, 2021, and the Displacement CP was extended to January 10, 2022.⁶

In its granted Extension Application, Gray stated that, it was on track to complete construction of its digital displacement facility by the July 13, 2021 construction deadline from the site which it was operating its analog facility. However, it was ultimately unable to reach an agreement with its tower landlord and was required to seek an alternate site. Gray was able to secure permission to build the Station's digital facility on the local water tower.⁷ Gray stated that it had purchased and received delivery of the transmitter and ordered the transmission line.

Since the grant of the Extension Application, Gray states that it immediately ordered a structural analysis for the water tower site in order to proceed with construction. However, because of ongoing labor shortages for qualified crews, Gray was unable to map the site until November 1, 2021. Gray reports that the crew completed its analysis and provided the required drawings in November 2021. All remaining equipment was delivered in December 2021. While in its pleading Gray states that the tower crew would not be able to arrive on site until mid-February 2022, counsel for Gray has informed Video Division staff that the tower crew is presently on site and actively working to complete construction. Gray now anticipates completion by mid-February 2022. In order to account for any further unforeseen construction delays, Gray asks for waiver of the tolling rules and tolling of its Displacement CP to March 11, 2022.

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 Displacement CP for 60 days to March 11, 2022.⁸ Gray has demonstrated that it has been diligently making progress towards completion of its facilities, but was unable to complete construction due to construction delays outside of its control including delays mapping its tower and scheduling a tower crew. Gray states that it currently has all equipment necessary to complete construction and the tower crew is now at the tower site. Grant of the relief requested will enable the Gray to complete digital construction and allow the Station to resume serve its viewers with all the benefits of digital television. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Displacement CP to March 11, 2022.

The above facts considered, Gray Television Licensee, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000160744) for KKTm-LP, Altus, Oklahoma, **IS TOLLED through March 11, 2022**. To the extent the Station seeks additional tolling, such a request must include a detailed plan for completing construction and a showing demonstrating that completion of the Station's facilities was prevented for either an eligible

⁶ See LMS File No. 0000150249.

⁷ Gray obtained a minor change construction permit for the new site. See LMS File No. 0000160744.

⁸ 47 CFR § 73.3598(b).

tolling reason or rare and extraordinary circumstances outside of Gray's control.⁹ We will look unfavorably upon any future request that does not include such information.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Joan Stewart, Esq.

⁹ *See id.* 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 Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.