

WAIVER and TOLLING REQUEST

MCS, LLC (“MCS”), licensee of TV Translators K28HS, FI 129378, K30HB, FI 129379, K32GB, FI 128911, and K36GJ, FI 129386, all Agana, Guam, requests (1) a waiver of Section 74.788(c)(3) of the deadline to file for extension of the digital flash cut construction permits¹ and (2) additional time to construct the facilities proposed by the construction permits pursuant to the tolling provisions of Section 73.3598(b) of the rules and (3) reinstatement of the expired construction permits. MCS greatly regrets that the translators’ digital construction permits were inadvertently allowed to expire on January 10, 2022. Based upon the unique and extraordinary circumstances described below, MCS seeks tolling of its construction permit until September 1, 2022.

MCS proposes that its translator facilities serve Agana (Hagatna) on the island territory of Guam, which is approximately 217 sq. miles in size and has a population of about 170,000. Guam is approximately 3, 945 miles west of Hawaii in the North Pacific. For perspective, Guam is approximately 6,000 air miles from Los Angeles, CA and 1,600 miles east of Manila, Philippine Islands. Obviously, all equipment must be shipped to Guam.

Grant of this waiver would allow MCS to provide new digital foreign language programming, religious programming and other programming unavailable to viewers on Guam without cable or broadband. Guam has few over-the-air broadcast facilities. Besides adding additional programming choices and voices, Guam, as an island in the North Pacific, is also subject to sudden and extreme weather conditions. These new facilities would provide additional vital emergency broadcasts and public safety information.

MCS originally intended to continue the simple retransmission of a local television station but with digital equipment. When MCS took the stations silent on June 13, 2021, MCS erroneously believed that it could merely bring the stations back on the air within one year, i.e. June 13, 2022, with digital equipment. Consequently, MCS was totally unaware that that they needed to

¹ Respectively, File Nos. 0000149946(K28HS); 0000149947 (K30HB); 000049969 (K36HB); and 0000149962 (K32GB) as modified by the pending modification applications.

extend their digital construction permits. While it impossible to say now, considering supply chain problems in the rest of the world and the difficulties other broadcasters had getting equipment delivered to Guam in 2021, MCS submits it would have been eligible for Tolling prior to July 13, 2021.

The years 2020 and 2021 saw the world and Guam under Pandemic restrictions. As a result, and because Guam is geographically isolated, MCS' principal, Robert E. Kelley, Jr, was unable to travel to various conventions such as NAB where he would be able to consult with other broadcasters and learn about new technologies and services.

However, Mr. Kelley was able to attend the National Translator Association Convention in May, 2022 in Oklahoma City where he first learned of the ability to rebroadcast original video programming from the U.S. mainland received via internet. This would allow MCS to bring in various programming sources heretofore unavailable on Guam. MCs quickly contracted with KAAP-LP, FI 167425, San Jose-Santa Clara, CA. MCS is also in negotiations with other stations to provide programming.

Consequently, on May 30, 2022 MCS ordered a 100 watt transmitter from Technalogix, LTD for \$7,925.40 which was delivered on June 24, 2022. The facilities were constructed and began broadcasting on July 12, 2022 pursuant to STAs.

The STA facilities are the permanent facilities. MCS is respectfully requesting Tolling until September 1, 2022 to perfect the operation before filing for licenses.

A station may seek additional time to construct its facility pursuant to a request to waive the tolling standard as set forth in Section 73.3598(c) of the rules upon a showing of rare and extraordinary circumstances.² The Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.³

² See *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post -Auction Transition Requirements and Deadlines*, Public Notice, DA 18-884 (rel.Aug.27, 2018) at paragraphs 13 and N.34.

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

Accordingly, extending the digital construction permits of K28HS, K30HB, K32GB and K36GJ and allowing MCS until September 1, 2022 to construct the four stations' digital facilities would serve the public interest. MCS submits that grant of the waiver of Section 74.788(c)(3) would be in the public interest and respectfully requests additional time to construct pursuant to the tolling provisions of section 73.3598(b) of the rules.