



Federal Communications Commission
Washington, D.C. 20554

July 22, 2022

MCS, LLC
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(sent via electronic mail)

Re: Requests to Reinstate Licenses and
Digital Construction Permits and For
Tolling Waivers
K28HS, K30HB, K32GB, and K36GJ,
Agana, GU
Facility ID Nos. 128911, 129378,
129379, and 129386
LMS File Nos. 0000194270,
0000194273, 0000194276, and
00001942778

Dear Counsel:

This letter concerns the Requests for Reinstatement, Waiver, and Tolling (Requests), as amended, filed on behalf of MCS, LLC (MCS) seeking reinstatement of the licenses and digital construction permits, waiver of the Commission's tolling provisions, and tolling of the reinstated construction permits for K28HS, K30HB, K32GB and K36GJ, all Agana, Guam (collectively Stations). For the reasons set forth below, we grant the Requests, reinstate the Stations' licenses, and reinstate and toll the digital construction permits to September 1, 2022.

Background. Low power television and TV translator stations (LPTV) that experienced delays in completing their digital facilities were permitted to seek a single six-month extension of time of their digital construction permits. Such requests were required to be filed by March 15, 2021.¹ Requests for additional time to construct beyond the six-month extension were 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

¹ See 47 CFR § 74.788(c)(3). An application for extension of time to construct was required to include an exhibit demonstrating that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control and that the licensee has taken all reasonable steps to resolve the problem expeditiously. Such circumstances include, but are not limited to: (1) delays in obtaining zoning or other approvals, or similar constraints; (2) inability to obtain equipment; or (3) financial hardship. See e.g., *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771, 71-72 (MB 2021). Stations that were unable to file their requests by March 15, 2021, were required to include a request for waiver of the CP extension filing deadline along with its request for extension.

² See 47 CFR § 73.3598(b).

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

The Stations are LPTV stations that MCS operates in order to provide over-the-air television to the residents of the island of Guam. The Stations previously operated in analog and pursuant to the Commission's rules went silent on July 13, 2021, as part of the LPTV digital transition.⁵ The Stations were granted construction permits to convert on-channel to digital (Digital CPs)⁶ and were assigned construction permit expiration dates of July 13, 2021.⁷ MCS' applications to extend the Digital CPs were granted in July 2021 and the Digital CPs expiration dates were extended to January 10, 2022.⁸ Because neither an application for license to cover nor requests for tolling or tolling waiver were filed on or before the extended January 10, 2022 expiration dates, the Digital CPs expired and were automatically forfeited.⁹ Furthermore, the Stations' analog licenses were automatically cancelled.¹⁰

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) (*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"). See *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).

⁵ See 47 CFR § 74.731(m).

⁶ See LMS File Nos. 0000149946, 0000149947, 0000149962, and 0000149969. See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015). In that decision, the Commission extended the LPTV digital transition date and all valid digital construction permit expiration dates for an analog station's until 12 months following the completion of the 39-month post-Incentive Auction transition period or 51 months from the completion of the Incentive Auction and the release of the *Closing and Channel Reassignment Public Notice*. *Id.* See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (IATF and MB 2018) (*Closing and Channel Reassignment Public Notice*). Given the April 13, 2017 release date of the *Closing and Channel Reassignment Public Notice*, the LPTV digital transition date and expiration date of all analog stations' digital construction permits were set as July 13, 2021.

⁷ See 47 CFR § 74.788(a).

⁸ See LMS File Nos. 0000151225, 0000151227, 0000151228, and 0000151229 (Extension Applications).

⁹ See 47 CFR § 74.788(b).

¹⁰ See 47 CFR § 74.731(m). The Commission has a long-established policy of the "single, unified station license" as part of the digital conversion process. See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 10732, 10755, para. 48 (2011) citing *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19390, n. 362 (2004) (stating that the Commission has always been clear that the station's two "authorizations" are part of a single, unified license) (emphasis added). Therefore, an analog

Requests. In its Requests, MCS states that the Stations did terminate analog operations on July 13, 2021, per the Commission's rules, and resumed digital operations pursuant to special temporary authority on July 12, 2022.¹¹ MCS represents that it originally intended to simply flash cut the Stations to digital and believed, when it took the Stations silent in July 2021, that it could do so within one year. MCS states that it inadvertently allowed the Digital CPs to expire on January 10, 2022. MCS argues that it would have qualified for tolling or tolling waiver had it filed for such relief in January 2022.

At the outset, MCS notes that the island of Guam is located approximately 3,900 miles west of Hawaii, 6,000 miles from Los Angeles and 1,600 miles east of Manila, Philippine Islands. Therefore, shipping of equipment to the island and securing professionals to conduct technical work on the island are a challenge even in the best of times. MCS argues that during 2020 and 2021, the island of Guam was under strict COVID-19 pandemic restrictions making it very difficult to travel to and from the island. As a result, and because Guam is geographically isolated, MCS experienced significant delays in finalizing its construction plans and arrangements for receiving its video programming from the U.S. mainland. MCS was ultimately able to finalize all outstanding matters in May 2022. The Stations began operating in digital for the first time on July 12, 2022, pursuant to special temporary authority (STA) while MCS makes final adjustments to the facilities in order to file a license to cover.

MCS goes on to note that the Stations are used by the over-the-air viewing public in Guam, a remote U.S. island territory in Micronesia. As a result, MCS maintains that the viewing public has limited sources for television programming and MCS has worked hard to serve them by bring in networks from the US mainland. MCS states that, for many island residents, the Stations are the only over-the-air source for television. Grant of the Requests, MCS argues, would allow the Stations to continue to provide new digital foreign language programming, religious programming and other programming unavailable to viewers on Guam without cable or broadband. Besides adding additional programming choices and voices, MCS notes that Guam, as an island in the North Pacific, is also subject to sudden and extreme weather conditions. MCS maintains that the Stations' digital facilities would provide additional vital emergency broadcasts and public safety information.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to reinstate the Stations' licenses, reinstate their digital construction permits, and waive our rules to toll the Digital CPs to September 1, 2022. Although MCS allowed the Stations' Digital CPs to expire on January 10, 2022, we find that MCS has made significant progress on constructing the Stations' digital facilities, and would have clearly justified waiver of the tolling rules and tolling of the Digital CPs had they filed such request in a timely manner.¹² MCS has resumed operations of the Stations pursuant to STA affording its viewers all the benefits of digital television for the first time. As one of only a few over-the-air television services for the island of Guam, we recognize the importance of reinstating the Stations' licenses so that they can once again provide important news and public safety information to the island's residents. All that remains is for MCS to finalize construction of the Stations' permanent digital facilities and file a license to cover, which we expect it will do within the extended construction period. Ultimately, we conclude that the public interest will be served by grant of MCS' Requests.

LPTV/TV Translator station whose analog license is automatically cancelled and does not have a digital construction permit no longer has a valid facility to convert to digital.

¹¹ See LMS File Nos. 0000194540, 0000194542, 0000194545, and 0000194560.

¹² MCS is cautioned to take care to ensure that the Station complies with all Commission rules and filing deadlines in the future. Failure to do so could result in sanction, such as forfeiture.

Accordingly, the Requests for Reinstatement, Waiver and Tolling filed on behalf of MCS, LLC **ARE GRANTED**, the licenses of K28HS, K30HB, K32GB and K36GJ, all Agana, Guam, **ARE REINSTATED** and the digital construction permits (LMS File Nos. 0000149946, 0000149947, 0000149962, and 0000149969) **ARE REINSTATED AND TOLLED to September 1, 2022**. To the extent the Stations seek additional tolling, such requests must include a detailed plan for completing construction and a showing demonstrating that completion of the Stations' facilities was prevented for either an eligible tolling reason or rare and extraordinary circumstances outside of MCS's control.¹³ 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): Allan Moskowitz, Esq.

¹³ 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 *Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.