



Federal Communications Commission
Washington, D.C. 20554

March 29, 2023

VIA CERTIFIED MAIL AND EMAIL

Kenai Mountains Public Media, Inc.
George O'Dell
P.O. Box 816
Seward, AK 99664
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Re: Request to Reinstate License and Digital
Construction Permit and For Tolling
Waiver
DDK03FO, Seward, AK
Facility ID No. 11547

Dear Licensee:

This letter concerns the Request for Reinstatement, Waiver, and Tolling Waiver (Request) filed on behalf of Kenai Mountains Public Media, Inc. (KMPM) seeking reinstatement of the license and digital construction permit (Digital CP), waiver of the Commission's tolling provisions, and tolling of the Digital CP for DDK03FO, Seward, Alaska (K03FO or Station). For the reasons set forth below, we grant the Request, reinstate the Station's license, and reinstate and toll the reinstated Digital CP to July 1, 2023.

Background. K03FO is a TV translator station that operated on analog channel 3. Pursuant to the Commission's rules, the Station went silent on July 13, 2021, as part of the LPTV digital transition. The Station resumed with digital operations pursuant to special temporary authority (STA) on July 13, 2022 and then went silent again following expiration of its STA in January 2023.¹ The Station was previously granted a Digital CP for a digital companion channel 17² and, because it was operating in analog at the time, it was given an expiration date of July 13, 2021.³ The Station was granted an extension of the Digital CP and the expiration date was extended to January 10, 2022.⁴ KMPM subsequently was granted a waiver of the tolling rules and the Digital CP's expiration date was tolled to September 30, 2022.⁵ KMPM failed to complete construction of the Digital CP facilities by the deadline and the Digital CP expired.

In addition, applications for renewal of license for Alaska TV translator stations were due October 3, 2022.⁶ KMPM failed to timely file a renewal application for K03FO, and on November 1, 2022, the Media Bureau's Video Division sent a pre-cancellation letter to KMPM warning that failure to

¹ See LMS File No. 0000194603.

² See LMS File No. 0000152098.

³ See 47 CFR § 74.788(a).

⁴ See LMS File No. 0000152245.

⁵ See Letter to Kenai Mountains Public Media, Inc. from Barbara A. Kreisman, Chief, Video Division (Jul. 25, 2022), a copy of which is available at LMS File No. 0000179612.

⁶ See 47 CFR § 73.3539.

submit a renewal application by February 1, 2023 would result in cancellation of the Station's license.⁷ KMPM failed to act and the Station's license was cancelled.⁸

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.⁹ 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.¹⁰ 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.¹¹

KMPM Request. In its Request, KMPM requests that the Commission reinstate its expired license and allow it to submit a late-filed application for renewal of license for the Station. Further, KMPM requests that its expired Digital CP be reinstated and the tolling rules be waived and the Digital CP extended to July 1, 2023. KMPM explains that it began operating a temporary digital facility on its digital companion channel 17 in July 2022 and continued operating the temporary facility while it sought to obtain equipment for a permanent digital facilities. Throughout the remainder of 2022, KMPM states that it continued to make progress, however, the transmitter manufacturer failed to deliver the Station's transmitter before the September 30, 2022 extended deadline of the Digital CP despite consistent communication with the transmitter manufacturer. For example, in September 14, 2022, KMPM received an e-mail from the transmitter manufacturer stating that the transmitter was ready to be sent to KMPM in Alaska. In an e-mail dated December 13, 2022, the transmitter manufacturer stated that it encountered a "roadblock" preventing final completion of the project. It was not until January 30, 2023, that the manufacturer was in fact ready to be shipped.

KMPM maintains that it is a volunteer-based organization with very limited funds. KMPM goes on to assert that it mistakenly believed that operation of the Station via a digital STA would prevent the Digital CP from expiring and that is why it failed to seek additional tolling. The Station not only serves its community of license of Seward, but also rural and remote areas on the Eastern Kenai Peninsula of Alaska that otherwise has limited over-the-air television service. As part of the Alaska Rural Communications System (ARCS) network, the Station provided viewers in these rural and remote areas

⁷ See Letter to Kenai Mountains Public Media, Inc., from Barbara A. Kreisman, Chief, Video Division (Nov. 1, 2022), a copy of which is available on LMS at the Station's main Facility ID No. 11547.

⁸ See *Broadcast Actions*, Public Notice, Report No. PN-2-230213-01, p. 4 (Feb. 13, 2023).

⁹ See 47 CFR § 73.3598(b).

¹⁰ *Id.*

¹¹ 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).

with a vital link to the outside world by providing important news, public affairs, emergency alerts, and weather information. Without the Station, KMPM argues that viewers in the majority of the Eastern Kenai Peninsula would be unable to receive vital emergency information provided by the ARCS network.

Accordingly, KMPM concludes that reinstating the Station's license and reinstatement and tolling of the Digital CP would serve the public interest based on the unique public interest benefits of preserving free, over the air television service to rural portions of Alaska.¹² KMPM states that if its license and Digital CP are reinstated, upon delivery of the transmitter, it will immediately complete construction, return the Station to operations on channel 17, and file an application for a license to cover the Digital CP. KMPM goes on to state that it will also quickly file a license renewal application associated with the Station upon reinstatement.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient and unique circumstances exist to reinstate the K03FO license, reinstate its Digital CP, and waive our rules to toll the Digital CP to July 1, 2023. Although KMPM failed to timely file an application for renewal of license and allowed the Station's Digital CP to expire, we find that KMPM has continued to pursue construction of the Station's digital facilities, and has justified reinstatement of the Digital CP and waiver of the tolling rules. KMPM is diligently working to complete construction and resume operation in order to afford its viewers all the benefits of digital television for the first time and ensure access to important news, public affairs, emergency alerts, and weather information. Furthermore, just as we previously recognized when providing various relief to stations in Alaska as part of the digital transition process,¹³ we again recognize the vital importance of the station's that serve viewers in rural and remote regions and serve as a vital (and sometime only source) of news and public safety information. Ultimately, based on the unique facts and circumstances presented we conclude that the public interest will be served by grant of KMPM's Request.

Accordingly, the Request for Reinstatement, Waiver and Tolling/Extension filed on behalf of Kenai Mountains Public Media, Inc. **IS GRANTED**, the license of K03FO, Seward, Alaska, **IS REINSTATED** and the digital construction permit (LMS File No. 0000152098) is **REINSTATED AND TOLLED to July 1, 2023**. Any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁴ Such a request must include a detailed accounting for what actions have been taken since tolling was granted, a plan for completing construction, and a showing demonstrating that completion of the Station's facilities was prevented for either an eligible tolling reason or rare and extraordinary circumstances outside of KMPM's control.¹⁵ We will look unfavorably upon any future request that does not provide such information and include such a plan. We also remind KMPM that any such request must be timely-filed **PRIOR** to the construction permit expiration date.

¹² See e.g., *State of Alaska - Request for Waiver of Section 74.731(m) of the Commission's Rules*, 36 FCC Rcd 10765 (2021) (permitting stations in Alaska that were part of the ARCS network to continue providing analog service beyond the digital transition deadline); Letter to State of Alaska from Barbara A. Kreisman, Chief, Video Division (Jan. 26, 2022), a copy of which is available at LMS File No. 0000179529 (providing waiver of the Commission's tolling rule in light of the unique circumstances of Alaska stations located in rural and remote areas that are part of the ARCS network).

¹³ *Id.*

¹⁴ 47 CFR § 73.3598(b).

¹⁵ 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.

In addition, KMPM is instructed to submit an application for renewal of license for K03FO, Seward, Alaska, **not later than ten (10) days from the date of this letter**. Failure to submit an renewal application will result in this decision being rescinded and the Station's license once again cancelled.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Mark Denbo, Esq.