



Federal Communications Commission
Washington, D.C. 20554

January 28, 2020

LR Telecasting, LLC
William H. Pollack
Ridge Lake Office Bld #304
855 Ridge Lake Blvd
Memphis, TN 38120

Re: Request for Tolling
KMYA-DT, Camden, AR
Facility ID No. 86534
LMS File No. 0000090345

Dear Licensee,

On December 26, 2019, LR Telecasting, LLC (LR), the licensee of KMYA-DT, Camden, Arkansas (KMYA or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant LR's request and toll the expiration date of KMYA's construction permit to March 2, 2020.

Background. Pursuant to Section 73.3700(b)(5) of the Commission's rules (Rules), a station that was assigned a new channel as a result of the Commission's incentive auction and repacking process may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.¹ All subsequent requests for additional time to construct are 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 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

LR requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities. KMYA is currently operating on its post-auction channel with temporary

¹ See 47 CFR § 73.3700(b)(5).

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

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) (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).

facilities.⁵ KMYA was previously granted an 180-day construction permit extension and two waivers of the tolling rules, the result of which is that the Station's construction permit was extended to November 27, 2019.⁶ LR states that it completed construction of the Station's post-auction channel facilities prior to its construction permit expiration date; however, when the transmitter was activated, the voltage readings began fluctuating anomalously. Upon investigation by the local utility company, LR reports that it was determined that the transformers on the service entrance pole serving the station needed to be replaced. LR estimates that this work will be completed by the end of February 2020. Based on the foregoing, LR requests that the Commission waive its tolling rule and toll the KMYA construction permit expiration date to March 2, 2020.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station's construction permit to March 2, 2020. LR has demonstrated it did not complete construction of its post-auction channel facilities due to a last-minute issue with the power system serving the Station's transmitter site. We also find that grant of LR's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KMYA has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive KMYA's signal while it operates using its interim facility, we believe that LR has every incentive to ensure viewers are fully informed about the Station's transition plan. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind LR that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."⁷ Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, LR Telecasting, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000028486) for KMYA-DT, Camden, Arkansas **IS TOLLED to March 2, 2020**. Grant of this tolling waiver does not permit KMYA to recommence operation on its pre-auction channel. We also remind LR that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Barry D. Woods, Esq.

⁵ See LMS File No. 0000072911. WPSG was repacked from channel 49 to channel 18.

⁶ See LMS File Nos. 0000063557, 0000072858, 0000081968.

⁷ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

⁸ See 47 § CFR 73.3598(b).