



Federal Communications Commission
Washington, D.C. 20554

July 2, 2020

Kailua Television, LLC
Dr. Christopher Racine
PO Box 8969
Honolulu, HI 96810
manager@kkai.tv
(via electronic mail)

Re: Request for Tolling Waiver
KKAI(TV), Kailua, HI
Facility ID No. 83180
LMS File No. 0000115933

Dear Licensee,

On June 23, 2020, Kailua Television, LLC (KTL), the licensee of Station KKAI(TV), Kailua, Hawaii (KKAI or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit. For the reasons below, we grant the Station's waiver request and toll KKAI's construction permit to December 28, 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

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).

KTL requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to December 28, 2020. KKAI is currently operating on its post-auction channel with temporary facilities.⁵ KKAI was previously granted a construction permit extension and subsequent tolling through July 1, 2020.⁶

KTL states that it had been working with its planned tower sharing partner KALO-TV, Honolulu, Hawaii, but the sharing arrangement was terminated earlier this year. KTL states that it was on pace to complete construction of its permanent post-auction channel facilities by its July 1, 2020 deadline when circumstances related to the COVID-19 pandemic disrupted those plans.⁷ KTL states that it has been unable to receive and install equipment that was scheduled to arrive from the mainland United States or to conduct its own construction efforts due to local restrictions related to COVID-19. Therefore, given these delays, KTL requests tolling of the Station's construction permit to December 28, 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 December 28, 2020.⁸ KTL has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of KTL's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KKAI has already ceased operation on its pre-auction channel and initiated operations on its post-auction channel using an interim facility. To the extent some viewers are unable to receive KKAI's signal while it operates using its interim facility, we believe that KTL 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 KTL 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."⁹ 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.

We further remind KTL that the Commission has stated that the Bureau may announce a deadline for the submission of final expense documentation for reimbursement well before the statutory deadline of

⁵ See LMS File No. 0000116125. KKAI was repacked from channel 50 to channel 29.

⁶ See LMS File Nos. 0000068546 and 0000086047.

⁷ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁸ 47 CFR § 73.3598(b).

⁹ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

July 3, 2023.¹⁰ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, we encourage KTL to submit eligible invoices as soon as practicable.

The above facts considered, Kailua Television, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000105110) for KKAI, Kailua, Hawaii, **IS TOLLED to December 28, 2020**. Grant of this tolling waiver does not permit KKAI to recommence operation on its pre-auction channel. We also remind KTL that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹¹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail):
Ari Meltzer, Esq.
(Attorney of Record)

¹⁰ See *id.* at 6567, para. 616; *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 34 FCC Rcd 1690, para 105 (2019). See also *Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program et al.*, GN Docket No. 12-268, Public Notice, 34 FCC Rcd 304, 312, para. 23 & n.35 (IATF/MB 2019).

¹¹ See 47 CFR § 73.3598(b).