



Federal Communications Commission  
Washington, D.C. 20554

July 2, 2020

KALO TV, Inc.  
Malala Pou  
P.O. Box 1256  
Honolulu, HI 96807  
[info@kalotv.com](mailto:info@kalotv.com)  
(via electronic mail)

Re: Request for Tolling Waiver  
KALO(TV), Honolulu, HI  
Facility ID No. 51241  
LMS File No. 0000116452

Dear Licensee,

On June 23, 2020, KALO TV, Inc. (KTI), the licensee of Station KALO(TV), Honolulu, Hawaii (KALO 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 KALO'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.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

KTI requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to December 28, 2020. KALO is currently operating on its post-auction channel

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</sup> 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).

with temporary facilities.<sup>5</sup> KALO was previously granted a construction permit extension and subsequent tolling through July 1, 2020.<sup>6</sup>

KTI states that it had been working with its planned tower sharing partner KKAI(TV), Kailua, Hawaii, who was managing a majority of the post-auction construction for both stations. However, the sharing arrangement was terminated earlier this year and KTI is now pursuing its own tower structure. Construction of the Station's post-auction channel facilities has been delayed because of work stoppages that resulted from the COVID-19 pandemic.<sup>7</sup> KTI also states that it recently discovered that it would need to modify the location and elevation of its proposed tower and that a modification of the construction permit for the Station's post-auction channel facilities is required.<sup>8</sup> Therefore, given these delays, KTI 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.<sup>9</sup> KTI has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of KTI's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KALO 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 KALO's signal while it operates using its interim facility, we believe that KTI 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 KTI 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."<sup>10</sup> 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 KTI 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

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<sup>5</sup> See LMS File No. 0000116454. KALO was repacked from channel 38 to channel 18.

<sup>6</sup> See LMS File Nos. 0000068474 and 0000093168.

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

<sup>8</sup> See LMS File No. 0000116448.

<sup>9</sup> 47 CFR § 73.3598(b).

<sup>10</sup> 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) (*Incentive Auction R&O*), aff'd, Nat'l Ass'n of Broadcasters v. FCC, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

July 3, 2023.<sup>11</sup> 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 KTI to submit eligible invoices as soon as practicable.

The above facts considered, KALO TV, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034872) for KALO-TV, Honolulu, Hawaii, **IS TOLLED to December 28, 2020**. Grant of this tolling waiver does not permit KALO to recommence operation on its pre-auction channel. We also remind KTI that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>12</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail):  
Anne Goodwin Crump, Esq.  
(Attorney of Record)

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<sup>11</sup> 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).

<sup>12</sup> See 47 CFR § 73.3598(b).