

### Justification

Kailua Television, LLC (“KTL”), licensee of television station KKAI(TV), Kailua, Hawaii (Fac. ID 83180) hereby requests a further waiver of the tolling provisions contained in Section 73.3598 of the Commission’s Rules to provide it with an additional six months to complete construction of its permanent post-incentive auction facilities as approved in FCC File No. 0000105110 (the “CP”). As set forth herein, KTL has been unable to complete the construction of its post-auction facilities due to “rare and exceptional” circumstances beyond its control.

#### **I. Background**

On July 2, 2020, the Commission granted KTL’s request for a further waiver of the Commission’s tolling provisions and tolling of KKAI’s construction permit expiration date. See Letter from Barbara A. Kreisman to Kailua Television, LLC (July 2, 2020), LMS File No. 0000115933. In granting the request, the Media Bureau recognized that KTL “did not complete construction of its post-auction channel facilities due to construction delays.” The Media Bureau further found 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.”

Since that time, KTL has encountered equipment issues that have been exacerbated by the effective inability to transport support personnel into Hawaii due to COVID-related travel restrictions. The transmitters that KKAI had ordered for KKAI were configured incorrectly upon arrival. Typically, service personnel would reconfigure the transmitters on site. However, the manufacturer’s personnel from Italy and Florida were unable to travel to Hawaii due to extensive quarantine requirements. As a result, KTL had to ship the transmitters back to the manufacturer for reconfiguration and shipment back to Hawaii.

In the meantime, Hawaii has only strengthened its COVID-related restrictions. On November 23, 2020, Governor David Y. Ige issued his Sixteenth Proclamation related to the COVID-19 emergency in which he invoked certain emergency powers, implemented mandatory health screenings and 14-day quarantines for persons traveling to Hawaii, and imposed liability upon hosts of persons traveling to the state.<sup>1</sup> Under these circumstances, it has taken longer than normal to secure the necessary equipment, redesign the DTS, and complete installation.

#### **II. The Commission Should Further Toll the CP**

Under the present circumstances, further tolling of the CP is justified. In its Public Notice adopting the post-Incentive Auction transition scheduling plan, the Media Bureau and the Incentive Auction Task Force declared that “[r]eassigned stations and band changing stations that are unable to complete construction of their post-auction channel facilities by their deadlines may seek a single extension of up to 180 days.”<sup>2</sup> All subsequent

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<sup>1</sup> [https://governor.hawaii.gov/wp-content/uploads/2020/11/2011098-ATG\\_Sixteenth-Proclamation-Related-to-the-COVID-19-Emergency-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/11/2011098-ATG_Sixteenth-Proclamation-Related-to-the-COVID-19-Emergency-distribution-signed.pdf).

<sup>2</sup> *Incentive Auction Task Force & Media Bureau Adopt A Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd. 890 ¶ 40 (MB & IATF 2017); 47 CFR § 73.3700(b)(5).

requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.<sup>3</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>4</sup> If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and still toll the expiration of the Station's construction permit where the station can demonstrate that "rare and exceptional circumstances" prevented construction.<sup>5</sup>

Tolling is appropriate here because KTL's inability to complete construction of its permanent post-Incentive Auction channel facilities is due to rare and exceptional circumstances beyond its control. Even before COVID-19, the Commission recognized that "some stations will face significant challenges in completing the post-auction transition to their new facilities" and committed to "work diligently with stations to ensure that service disruptions are minimized to the fullest extent possible through the use of a variety of mechanisms."<sup>6</sup> The present circumstances, which could not have been anticipated and are well-outside KTL's control, justify further flexibility.

In granting KTL's most recent tolling request, the Video Division recognized that "KTL's waiver and tolling request is not likely to delay the overall transition schedule and will not cause interference to other stations" because KKAI had already transitioned to its post-auction channel using an interim facility. An additional six month tolling of the CP is necessary in these unpredictable circumstances and will allow KTL to complete construction in a manner that is safe for its employees and contractors.

In short, the public interest will be served by grant of waiver and tolling of the CP.

KTL currently anticipates that it will complete construction of its post transition facilities within 60-90 days of the Media Bureau approving its pending application to convert back to a DTS. However, due to the added and unpredictable challenge of navigating Hawaii's rapidly changing COVID-related travel and work restrictions, which has made it difficult to transport equipment and personnel into the state, KTL seeks an additional 180 days to complete construction. KTL is aware of the October 8, 2021 deadline to submit all remaining invoices and documentation for reimbursement and will submit all required documentation well in advance of that deadline.

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<sup>3</sup> 47 C.F.R. § 73.3598(b).

<sup>4</sup> *Id.*

<sup>5</sup> See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd. 17525 ¶ 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."

<sup>6</sup> See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 ¶ 569 (2014).

### **III. Conclusion**

For the foregoing reasons, the Commission should grant KTL's request for waiver of the Commission's tolling provisions and toll KKA's CP for an additional 180 days.