



Federal Communications Commission
Washington, D.C. 20554

December 22, 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. 0000129460

Dear Licensee,

On December 7, 2020, Kailua Television, LLC (KTL), the licensee of KKAI(TV), Kailua, Hawaii (KKAI or Station), filed the above-referenced request, as amended, for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date for an additional 180 days. For the reasons below, we grant KTL's request and toll the expiration date of KKAI's construction permit through June 28, 2021.¹

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.² All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.³ 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.⁴ 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.⁵

¹ Because 180 days from the Station's current construction expiration date falls on Saturday, June 26, 2021, we will extend the construction permit to the next business day, which would be Monday, June 28, 2021. *See* 47 CFR § 1.4.

² *See* 47 CFR § 73.3700(b)(5).

³ *See* 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

⁴ *Id.*

⁵ *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 for an additional 180 days. KKAI has been granted a construction permit extension and twice granted tolling and its construction permit was extended through December 28, 2020.⁶ KKAI is currently operating on its post-auction channel with temporary facilities.⁷

KTL states that, since the grant of its last tolling waiver request, it has encountered equipment issues that have been exacerbated by the inability to transport support personnel into Hawaii due to COVID-19 related travel restrictions.⁸ KTL states that the transmitters that KKAI ordered were configured incorrectly upon arrival. While service personnel would typically reconfigure the transmitters on site, KTL states that in this case 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 then ship them back to Hawaii. In the meantime, KTL states that Hawaii has only strengthened its COVID-related restrictions including mandatory health screenings, 14-day quarantines for persons traveling to Hawaii, and imposed liability upon hosts of persons traveling to the State. Therefore, KTL states that it has taken longer than normal to secure the necessary equipment and complete installation. Given these delays and the enhanced COVID travel restrictions to Hawaii, KTL requests tolling of the Station's construction permit of an additional 180 days.

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 through June 28, 2021.⁹ KTL has demonstrated it has been unable to complete construction of its post-auction channel facilities due to construction and equipment delivery 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 is operating from an interim facility on its post-auction channel. 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."¹⁰ 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 of the deadline for submitting final expense documentation for

⁶ See LMS File Nos. 0000068546, 0000086047 and 0000115933. KKAI was repacked from channel 50 to channel 29.

⁷ See LMS File No. 0000129459.

⁸ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁹ 47 CFR § 73.3598(b).

¹⁰ 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.").

reimbursement for the Station is October 8, 2021.¹¹ 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, and 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(TV), Kailua, Hawaii, **IS TOLLED through June 28, 2021**. 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.¹²

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division Media Bureau

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

¹¹ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

¹² See 47 CFR § 73.3598(b).