

KXKW-LD (167755), LAFAYETTE, LA

Delta Media Corporation

REQUEST FOR EXTENSION OF CP/TOLLING

Delta Media Corporation ("Delta") is the licensee of KXKW-LD. KXKW-LD, licensed on Ch. 32, has a displacement CP for Ch. 30 which expires on October 1, 2021. Delta had multiple other stations with repack or displacement builds. It was moving along toward the KXKW-LD when the pandemic hit virtually eliminating the ability to get a tower crew in. Lafayette, LA is in the heart of the areas hardest hit by COVID-19 and its most recent Delta variant.

Delta ordered, had delivered and is ready to install the antenna and transmitter. In the months since the pandemic abated sufficiently to allow Delta to schedule the required tower crew, the area weather patterns have been unusual. Through all of March, April, May and June, rains and/or thunderstorms were forecasted nearly *every day*. Although the weather deviated from the forecasts, with rain and thunderstorms forecast daily, attempting to schedule a tower crew to perform any work was almost impossible and resulted in significant weather delays. Several days of heavy rains would cause flooding around the base of the tower. Other factors such as wind conditions that were above OSHA limits and/or clouding skies with the potential to produce thunderstorms prevented work from being done. For much of July and well into August Lafayette had days where the heat index was into triple digits.

Add to this that Louisiana is in a heavy hurricane area (there were 5 big ones in 2020 along with Ida and Nicholas this year with more storms forming...) We are now into the height of the hurricane season. While Delta dodged a bullet in that it did not take a direct hit from Hurricane Ida, it did have power disruptions and was dumped on with yet more rain. Given the lack of fuel and lodging, Delta could not get the tower crew in in the days that followed.

This build also requires a specialized tower crew accustomed to tall tower work. For the antenna change work required on this build, the work to be performed on the KXKW tower is at elevations of 900 to 950 feet about ground level. Most tower crews cannot manage this type of work above 500 feet. Delta is working with a tower company with competent crews accustomed to working at high tower elevations. Given the tall tower work, weather at the time of the work is paramount for the safety of the crew and the equipment.

Delta was finally able to get its tower crew scheduled only to have the owner of the tower company delay the install due to a death in the family due to COVID-19.

As of September 14th, the tower crew foreman has advised that Delta's build is next on their schedule and hopes to be at the site to start the antenna change out the first week of October. Delta has prepaid the tower company's required upfront fee for mobilization and the tower company has committed to coming as soon as a reasonable break in the weather looks to be on the horizon.

Barring unforeseen complications, Delta anticipates that implementation will take approximately two weeks from the time the tower crew arrives on site to complete - assuming consecutive working days

not interrupted by weather preventing work in a tall tower. After the tower is rigged, in order to clear tower space to permit the KLWB 103.7 FM antenna bays to be moved from their current mounting positions on the western leg of the tower, KXKW-LD channel 32 will be taken silent so the crew can dismantle and remove the existing 16 bay channel 32 side-mounted antenna and its power divider from the tower leg and lower all of its components to the ground. The tower crew also will remove and lower to the ground the antenna bays and power dividers for former KXKW-LP channel 6 facility. The 6 FM bays will be re-mounted on the leg of the tower in the space left clear from the removal of the KXKW-LD channel 32 and KXKW-LP channel 6 antennas.

Once this work is completed, the new channel 30 antenna will be raised and mounted in position on the western leg of the tower in the space left vacant after moving the KLWB 103.7 FM bays. Some additional transmission line re-work will have to be done because the existing transmission line run for the channel 32 antenna runs up the side of the tower opposite to the location of the new antenna. Provisions will need to be made for the transmission line to reach and mate up to the channel 30 antenna input connection. The repositioning on the tower will enable the new Ch. 30 antenna to comply the pattern requirements included in the KXKW-LD Ch. 30 CP.

While the tower crew is working through the antenna change outs, the engineering team will be working to remove the decommissioned channel 32 transmitter and to install the new air cooled transmitter and the new mask filter. The new transmitter installation should not more than a couple of days to complete. It is anticipated that the transmitter should probably be ready for program tests about the same time the tower crew completes the antenna installation. Once the new transmitter and filter are installed and connected to the transmission system and the program feed connected to the exciter, the testing will begin. Once the tests prove to be satisfactory, the application for the license be submitted to the FCC.

Given the significant and continuing rains and hurricanes that have delayed implementation of the displacement facility and other factors beyond Delta's control as discussed above (e.g., the COVID pandemic and its impact on the ability to get equipment and tower crews) despite its diligent efforts to navigate these difficulties, out of an abundance of caution and to allow a little bit of a buffer in the event of further delays or unforeseen problems, Delta asks for a 60-day tolling of the CP to allow it complete construction. Delta is very motivated to get the facility built and intends to complete it and file license to cover as soon as the work can safely be completed.

Section 73.3598(b)(1) of the FCC's rules provides for tolling based on Acts of God. Clearly the inordinate rain fall/weather and hurricanes encountered by Delta as well as the impact of the historic COVID-19 pandemic can be defined as Acts of God beyond any human ability to control.

In the Incentive Auction Report and Order, the Commission explained that it would be receptive to requests for waivers of Section 312(g) and, if necessary, tolling of CPs resulting from the repacking process and whether, in light of the facts presented, equity and fairness dictate a license extension or reinstatement and a waiver."¹ The Media Bureau expanded upon this position in the Post-Incentive Auction Procedures Public Notice, explaining that in considering requests for waiver of Section 312(g), it "will examine whether the station has demonstrated that its silence is the result of compelling reasons

¹ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, FCC Rcd 6567 ¶ 585 (2014), *aff'd*, *Nat'l Assoc. of Broadcasters, et al v. FCC*, 789 F.3d 165 (D.C. Cir. 2015)

beyond the station's control, including facts that relate to the post-auction transition process."² While that related to requests for waiver of Section 312(g), Delta argues that the same rationale should apply here. Delta's station was displaced by the repacking process and events totally beyond its control have prevented its timely completion of construction.

For all these reasons, a short period of tolling to complete construction of the channel 30 facility is respectfully requested and in the public interest.

² *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd. 858 ¶ 49 (IATF/MB 2017).