



Federal Communications Commission
Washington, D.C. 20554

February 8, 2022

Unalaska Community Broadcasters, Inc.
Lauren Adams
P.O. Box 181
Unalaska, AK 99685
lauren@kucb.org
(sent via electronic mail)

Re: Request to Reinstate License and Digital
Construction Permit and For Tolling
Waiver
KUCB-LP, Dutch Harbor, AK
Facility ID No. 68756
LMS File No. 0000177567

Dear Counsel:

This letter concerns the Request for Reinstatement, Waiver, and Tolling Waiver (Request), as amended, filed on behalf of Unalaska Community Broadcasters, Inc. (UCB) seeking reinstatement of the license and digital construction permit (Digital CP), waiver of the Commission's tolling provisions, and tolling of the reinstated construction permit for KUCB-LP, Dutch Harbor, Alaska (KUCB-LP or Station). For the reasons set forth below, we grant the Request, reinstate the Station's license, and reinstate and toll the reinstated digital construction permit to July 11, 2022.

Background. KUCB-LP is a low power television (LPTV) station that operated in analog on channel 8. The Station was granted a construction permit to convert to digital (Digital CP)¹ and was assigned a construction permit expiration date of July 13, 2021.² On July 1, 2021, the Station was granted a waiver of the July 13, 2021 LPTV analog termination deadline³ and extension of the Digital CP to October 13, 2021.⁴ Because neither an application for license to cover nor request for tolling or waiver of the tolling rules was filed on or before the October 13, 2021 expiration date, the Digital CP expired and

¹ See LMS File No. 0000149591. See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015). In that decision, the Commission extended the LPTV digital transition date and all valid digital construction permit expiration dates for an analog station's until 12 months following the completion of the 39-month post-Incentive Auction transition period or 51 months from the completion of the Incentive Auction and the release of the *Closing and Channel Reassignment Public Notice*. *Id.* See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (IATF and MB 2018) (*Closing and Channel Reassignment Public Notice*). Given the April 13, 2017 release date of the *Closing and Channel Reassignment Public Notice*, the LPTV digital transition date and expiration date of all analog stations' digital construction permits were set as July 13, 2021.

² See 47 CFR § 74.788(a).

³ See 47 CFR § 74.731(m).

⁴ See Letter to Unalaska Community Broadcasting, Inc. from Barbara A. Kreisman, Chief, Video Division (July 1, 2021), available at LMS File No. 0000151054 (KUCB Waiver).

was automatically forfeited.⁵ Furthermore, the Station's analog license was automatically cancelled at 12:00 A.M. (local time) on October 14, 2021.⁶ UCB states that KUCB-LP has ceased operation .

Requests for additional time to construct low power television facilities are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.⁷ 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.⁸ 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.⁹

UCB Request. In its Request, UCB states that it has continued to encounter construction delays that are beyond its control because of the extreme remoteness (Aleutian Islands) of the station's site, limited communications, extreme weather, and delays securing necessary equipment. UCB maintains in its Request that the COVID-19 pandemic has also continued to have an especially harsh effect on Alaska's isolated island communities due to limitations on travel into the area.¹⁰

Despite all of these unique obstacles, UCB states that it remains committed to completing the Station's digital transition. UCB states that it is actively working with the State of Alaska to obtain the necessary digital equipment for the Station. UCB states that it is in the process of arranging to have the transmitter shipped to Anchorage and evaluated by UCB's technical consultant. UCB notes that the transmitter is currently set to operate on channel 2 and will need to be modified to work on the Station's

⁵ See 47 CFR § 74.788(b)

⁶ See 47 CFR § 74.731(m). The Commission has a long-established policy of the "single, unified station license" as part of the digital conversion process. See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Second Report and Order, 26 FCC Rcd 10732, 10755, para. 48 (2011) citing *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19390, n. 362 (2004) (stating that the Commission has always been clear that the station's two "authorizations" are part of a single, unified license) (emphasis added). Therefore, an analog LPTV/TV Translator station whose analog license is automatically cancelled and does not have a digital construction permit no longer has a valid facility.

⁷ See 47 CFR § 73.3598(b).

⁸ *Id.*

⁹ 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) (*Streamlining MO&O*) (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).

¹⁰ See also KUCB Waiver at 3 (detailing the harsh effect of the COVID-19 on remote regions of Alaska).

channel 8. UCB estimates that this work can be completed by the construction permit's extended construction deadline in July 2022.

UCB argues that grant of the requested relief is vital to the isolated Alaska communities the station serves. As the Media Bureau (Bureau) recognized when it granted UCB's analog termination waiver and extension of its Digital CP, KUCB-LP is the sole over-the-air television station serving Dutch Harbor, Alaska, as well as Unalaska and the surrounding area of the Aleutian Islands.¹¹ Without a local television broadcasting outlet, UCB states that Dutch Harbor and the Unalaska region could easily be cut off from vital emergency broadcasts and public safety information.¹² UCB concludes that reinstating the Station's license and tolling the Digital CP would serve the public interest.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to reinstate the KUCB-LP license, reinstate its digital construction permit, and waive our rules to toll the Digital CP to July 11, 2022. Although UCB allowed the Station's Digital CP to expire, we find that UCB has continued to pursue construction of the Station's digital facilities, and has justified waiver of the tolling rules. UCB is diligently working to complete construction and resume operation in order to afford its viewers all the benefits of digital television for the first time. Furthermore, just as the Bureau recognized when granting UCB's analog termination waiver and extension of its Digital CP,¹³ we again recognize the vital importance of the Station to its viewers as the sole source of over-the-air television news and public safety information for Dutch Harbor and the Unalaska region.¹⁴ Ultimately, based on the unique facts and circumstances we conclude that the public interest will be served by grant of UCB's Request.¹⁵

Accordingly, the Request for Reinstatement, Waiver and Tolling/Extension filed on behalf of Unalaska Community Broadcasters, Inc. **IS GRANTED**, the license of KUCB-LP, Dutch Harbor, Alaska, **IS REINSTATED** and the digital construction permit (LMS File No. 0000149591) is **REINSTATED AND TOLLED to July 11, 2022**. Any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁶ Such a request must include a detailed accounting for what actions have been taken since tolling was granted, a plan for completing construction, and a showing demonstrating that completion of the Station's facilities was prevented for either an eligible tolling reason or rare and extraordinary circumstances outside of UCB's control.¹⁷ We will look unfavorably upon any future request that does not provide such information and

¹¹ KUCB Waiver at 3-4.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See also Letter to State of Alaska from Barbara A. Kreisman, Chief, Video Division (Jan. 26, 2022), available at LMS File No. 0000180031 (granting fifteen State of Alaska TV translator stations tolling waivers and tolling their digital construction permits until July 11, 2022).

¹⁶ 47 CFR § 73.3598(b).

¹⁷ See *id.* A station may also seek a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" prevent construction. See *Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.

include such a plan. We also remind UCB that any such request must be timely-filed **PRIOR** to the construction permit expiration date. Furthermore, we note that UCB did not request authority for the Station to resume analog operations and this action does not permit the Station to resume analog operations.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Brad Deutsch, Esq.