

Gray Television Licensee, LLC (“Gray”), licensee of K35PO-D, Bismarck, ND (FID 186094) (the “Station”) requests this further waiver of the Commission’s tolling rules to allow for an extension of the Station’s displacement construction permit (File No. 0000157641) (the “CP”). As described below, Gray has been working diligently to complete construction of the Station’s displacement facilities. However, since the Commission granted an extension of the CP, Gray has encountered significant and insurmountable challenges securing a transmitter as a result of global supply chain and labor force disruptions.

Gray acquired the Station on September 22, 2021. However, understanding that it would have a limited time to construct the station after acquisition, Gray began planning for this build out in July 2021 as soon as it filed the application seeking the FCC’s consent to the assignment. Once a structural analysis of the proposed tower site was completed, Gray placed an order for the antenna, transmitter and transmission line. The transmitter for this facility was originally scheduled to arrive on December 1, 2021, leaving plenty of time to complete construction even with uncertain winter weather in North Dakota. However, Rhode & Schwarz has informed Gray that it is suffering severe supply chain interruptions for a critical component and significant shipping delays. At this time, the manufacturer believes the earliest it can deliver the Station’s transmitter is February 24, 2022. Except for the transmitter, all other equipment is on site and ready for installation. Because tower crews are limited, Gray will coordinate the final build out for this Station and commonly-owned K18NW-D as soon as possible given winter weather.

Under the present circumstances, a waiver of tolling and extension of the CP is justified. 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>1</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>2</sup>

Tolling is appropriate here because Gray’s inability to complete construction of its displacement facilities for the Station is due to rare and exceptional circumstances beyond its control.<sup>3</sup> The global supply chain

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<sup>1</sup> *Id.*

<sup>2</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>3</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”).

disruptions and their impact on the availability of broadcast equipment have been well documented.<sup>4</sup> As a result of these supply chain issues and despite its diligence, Gray has been unable to obtain a transmitter in time to complete construction of the Station by the January 10, 2022 CP deadline. Nevertheless, Gray has made significant progress toward construction this Station. It has completed a structural analysis and secured all other needed equipment.

A waiver of tolling under these circumstances is consistent with the Commission's approach to other construction related delays as part of the post-Incentive Auction transition. 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>5</sup> In justifying the provision of a one-time, 180-day extension, the FCC explained that "[g]iven the variety of challenges that stations may face in connection with the post-auction transition, stations that are able to demonstrate that they have experienced uncontrollable and unexpected delays in construction should be allowed a single extension of up to six months before being subject to our stricter tolling provisions."<sup>6</sup> The same rationale applies to low power television stations that have been attempting to complete their displacement facilities digital conversions in the middle of a global pandemic and supply chain shortage.

Based on current estimates, Gray will receive the transmitter by late February. However, because of the limited availability of qualified tower crews and the likelihood of severe winter weather in this region that may impact the ability of its tower crew to complete installation of the equipment, Gray is requesting an extension of 180 days. For the reasons stated above, Gray asks that the Commission waive the tolling standard and provide Gray with an additional 180 days to complete construction and license its displacement facilities.

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<sup>4</sup> See, e.g., Lazaro Gamio and Peter S. Goodman, *How the Supply Chain Crisis Unfolded*, The New York Times (Dec. 5, 2021), <https://www.nytimes.com/interactive/2021/12/05/business/economy/supply-chain.html>.

<sup>5</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).

<sup>6</sup> *Incentive Auction Order* ¶ 583.