



Federal Communications Commission
Washington, D.C. 20554

April 6, 2022

Iglesia Jesucristo es Mi Refugio, Inc.
2929 S. Westmoreland Rd.
Dallas, TX 75233
DELAUNDER@AOL.COM
(via electronic mail)

Re: Request for Tolling Waiver
K43AG-D, Edwards, CA
Fac ID No. 34284
LMS File No. 0000163407

Dear Licensee,

This concerns a request for waiver of the Commission's tolling provisions and tolling of construction permit expiration date (Request), as amended, filed by Iglesia Jesucristo es Mi Refugio, Inc. (IJMR), licensee of low power television station K43AG-D, Edwards, California (K43AG-D or Station). For the reasons below, we deny IJMR's Request, the Station's construction permit is forfeited.

Background. Requests for additional time to construct modified digital low power television facilities are subject to the Commission's tolling provisions of section 73.3598(b) of the Commission's rules (rules).¹ 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.² 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.³

Request For Tolling Waiver. K43AG-D is a LPTV station that was operating on channel 43. As part of the Incentive Auction repacking process, the Station's channel 43 was displaced. IJMR timely filed a displacement application for the Station for channel 32 and that application was granted on October 11, 2018 (Displacement CP) and given an expiration date of October 11, 2021.⁴

¹ See 47 CFR § 73.3598(b).

² *Id.*

³ 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).

⁴ See LMS File No. 0000054794.

In its Request, IJMR maintains that it has engaged in diligent efforts to build-out its displacement facilities which, at the time of filing in October 2021, it claimed “are now almost complete.” IJMR stated that completion was delayed:

“due to multiple causes, ranging from competition for resources and supply constraints during repacking, and the ongoing pandemic conditions caused by COVID-19; illness, social distancing, and other pandemic-related precautions have resulted in equipment delivery delays and labor shortages, including the availability of tower crews; an already limited, highly-specialized and thinly-stretched work force necessary to install broadcast antennas and related equipment.”

In addition, IJMR maintains that its principal contractor “has had multiple permits that he was required to construct, which also strained its availability and resources.” IJMR argues that a waiver of the tolling rules is justified here because construction delays were beyond its control. Grant of its Request would serve the public interest as it will allow the Station to once again “bring important television digital programming service to the viewing public on its new channel.”

Discussion. Upon review of the facts and circumstances presented, we find that IJMR has not demonstrated that rare and extraordinary circumstances exist to waive the rules and toll the expiration date of its Displacement CP.⁵ IJMR cites to only general delays that it allegedly experienced without specifying how these events directly attributed to specific delays. IJMR does not show that it made any effort to construct the displacement facilities from the time the construction permit was issued in October 2018 until October 2021 when it alleges, without supporting evidence, it began to construct its displacement facilities. IJMR’s alleged recent efforts are undocumented and it provides little to support its statement that the facilities “are now almost complete.” With the Displacement CP set to expire, at best, IJMR appears to have made a half-hearted, late attempt to quickly construct the displacement facilities and simply ran out of time.

IJMR generally cites to the COVID-19 pandemic, and related equipment shortages and tower crew delays but provides no further proof how or when such factors directly impacted construction. In order to find the compelling circumstances prevented the Station from competing construction of its displacement facilities, IJMR should have included documentation demonstrating the specific steps it had taken to complete construction, and how COVID-19 had specifically impacted each of those efforts. For example, IJMR could have provided (i) evidence that equipment was ordered on time but had been delayed due to shipment constraints or supply chain issues; (ii) correspondence from its engineers indicating that they were scheduled to install equipment, but could not proceed due to the COVID-19 pandemic; and/or (iii) invoices demonstrating expenditures to further construction. IJMR has offered no such evidence. IJMR was offered an opportunity to amend its Request to provide such evidence, but did not respond.⁶

IJMR had three years to undertake efforts to complete the Station’s displacement facilities and should have done so knowing there would be an increased demand for low power television equipment

⁵ 47 CFR § 73.3598(b).

⁶ See Letter to Iglesia Jesucristo es Mi Refugio, Inc. from Barbara A. Kreisman, Chief, Video Division, October 14, 2021 available at LMS File No. 0000163407.

and services.⁷ To the extent it decided to wait to undertake efforts, such inaction was solely its decision and not outside of its control.⁸

As discussed above, the Displacement CP was filed and granted as part of the Commission's Special Displacement Window.⁹ Subsequently, K43AG-D submitted Form 399 and supporting documentation in the Commission's License Management System (LMS) to substantiate its eligibility for reimbursement from the Commission's TV Broadcaster Relocation Fund.¹⁰ To be eligible for reimbursement, federal law and Commission rules require that the station filed an application during the Special Displacement Window and obtained a construction permit pursuant to that filing.¹¹ K43AG-D was granted eligibility in the reimbursement program.¹² K43AG-D's forfeiture of the Displacement CP issued pursuant to an application in the Special Displacement Window terminates the station's eligibility for reimbursement.

The above facts considered, the request for waiver of the tolling rules of Iglesia Jesucristo es Mi Refugio, Inc. for K43AG-D, Edwards, California **IS DENIED** and pursuant to 47 CFR 74.788(b) the construction permit (LMS File No. 0000054794) **IS EXPIRED AND AUTOMATICALLY FORFEITED**. To the extent the licensee still wishes to pursue construction of a displacement facility for the station, it will need to file a new displacement application.¹³

⁷ See Letter to DTV America Corporation from Barbara A. Kreisman, Chief, Video Division, Media Bureau, LMS File Nos. 0000072592, 0000072586, 0000067868, 0000069756 and 0000072575 (Oct. 29, 2020).

⁸ See Letter to Prism Broadcasting Network, Inc. from Barbara A. Kreisman, Chief, Video Division, Media Bureau, LMS File Nos. 0000081064, 0000144407, 0000081065, 0000082080, and 0000137464 (Dec. 13, 2021).

⁹ See *Incentive Auction Task Force and Media Bureau Announce Post Incentive Auction Special Displacement Window April 10, 2018, Through May 15, 2018, And Make Location and Channel Data Available*, Public Notice, 33 FCC Rcd 1234 (IATF and MB 2018); *Incentive Auction Task Force and Media Bureau Extend Post-Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (IATF and MB 2018).

¹⁰ See LMS File No. 0000089431.

¹¹ 47 U.S.C. § 1452(k)(1); 47 C.F.R. § 73.3701(b)(1); *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 34 FCC Rcd 1690, 1704, paras. 24-26 (2019).

¹² See LMS File No. 0000089431.

¹³ We note that Station's current operational status is unknown at this time. Simultaneous with the release of this letter, IJMR is being afforded 30 days to provide evidence that the Station has either not been silent for more than one year or went silent but returned to the air with authorized facilities prior to its one-year silent anniversary. See Letter to Iglesia Jesucristo es Mi Refugio, Inc. from Barbara A. Kreisman, Chief, Video Division (April 6, 2022) a copy of which is available at LMS Facility ID No. 34284. See 47 U.S.C. § 312(g) that provides that if a broadcast station fails to transmit broadcast signals with its authorized facilities for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license to promote equity and fairness.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Dan Alpert, Esq.