



Federal Communications Commission
Washington, D.C. 20554

April 21, 2022

SENT VIA CERTIFIED MAIL AND ELECTRONIC MAIL

South Seas Broadcasting, Inc.
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Re: Request to Reinstate License and Digital
Construction Permit and For Tolling
Waiver
DKBAD-LP, Pago Pago, AS
Facility ID No. 128905
LMS File No. 0000152660
Pleading File No. 0000158736

Dear Counsel:

This letter concerns the Petition for Reconsideration filed on behalf of South Seas Broadcasting, Inc. (SSB) seeking reinstatement of the license and digital construction permit, waiver of the Commission's tolling provisions, and tolling of the reinstated construction permit for former low power television (LPTV) station DKBAD-LP, Pago Pago, American Samoa (DKBAD or Station).¹ For the reasons set forth below, we grant the Petition, reinstate the Station's license, and reinstate and toll the digital construction permit to July 11, 2022.

Background. DKBAD-LP was a LPTV station that operated in analog on channel 30 and pursuant to the Commission's rules went silent on July 13, 2021, as part of the low power television digital transition.² In its July 13, 2021 request for silent authority,³ SSB stated that it was requesting silent authority for the Station "due to our inability to implement digital operation by July 13, 2021." SSB explained that "American Samoa has been completely shut down since March, 2020, when all commercial airline flights into and out of the territory were suspended due to the Covid-19 pandemic." As such, SSB stated, "engineering personnel have been unable to travel to the island in order to install new digital transmission gear." SSB represented that "[a]ll equipment is on-hand and ready to install as soon as travel to the territory is permissible." SSB concluded that "[a]s of July 13, 2021, no date has been announced allowing the resumption of travel." SSB requested "Special Temporary Authority to remain off-air until the new equipment can be installed."

¹ Petition for Reconsideration filed by South Seas Broadcasting Inc. (filed Sept. 7, 2022) (Petition) available in LMS at Pleading File No. 0000158736.

² See LMS File No. 0000152660; see also 47 CFR § 74.731(m).

³ LMS File No. 0000152660.

The Station was granted a construction permit to convert to digital (Digital CP)⁴ and assigned an expiration date of July 13, 2021.⁵ Because neither an application for license to cover nor application for extension of construction permit was filed on or before the July 13, 2021 expiration date, the Digital CP expired and was automatically forfeited.⁶ Furthermore, the Station's analog license was automatically cancelled at 12:00 A.M. (local time) on July 14, 2021.⁷ SSB was informed of these facts in a staff letter dated August 10, 2021.⁸

LPTV/translator stations that experienced delays in completing their digital facilities were permitted to seek a single six-month extension of time of their digital construction permits. Such requests were required to be filed by March 15, 2021.⁹ Requests for additional time to construct beyond the six-month extension were subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.¹⁰ The Commission's tolling provisions provide that a construction permit deadline may be tolled under

⁴ See CDBS File No. BDFCDTL-20110627AAT.

⁵ See 47 CFR § 74.788(a); see also *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 analog stations 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.

⁶ See 47 CFR § 74.788(b).

⁷ 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.

⁸ See Letter to South Seas Broadcasting, Inc. from Barbara A. Kreisman, Chief, Video Division (Aug. 10, 2021), a copy of which is available at the DKBAD-LP main LMS station record, Facility ID. 128905.

⁹ See 47 CFR § 74.788(c)(3). An application for extension of time to construct was required to include an exhibit demonstrating that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control and that the licensee has taken all reasonable steps to resolve the problem expeditiously. Such circumstances include, but are not limited to: (1) delays in obtaining zoning or other approvals, or similar constraints; (2) inability to obtain equipment; or (3) financial hardship. See e.g., *Media Bureau Reminds Low Power Television and Television Translator Stations of July 13, 2021, Digital Transition Date*, Public Notice, 36 FCC Rcd 4771, 71-72 (MB 2021). Stations that were unable to file their requests by March 15, 2021, were required to include a request for waiver of the CP extension filing deadline along with its request for extension.

¹⁰ See 47 CFR § 73.3598(b).

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.¹¹ 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.¹²

SSB Petition. In its Petition, SSB acknowledges that, instead of requesting an extension of its Digital CP in its July 13, 2021 silent STA, it should have filed a separate extension application. Had it done so, SSB argues, it would have qualified for an extension and that would have maintained the status of the Digital CP and the Station's license. SSB understood that it needed to request additional time complete construction of its digital flash cut facilities and simply sought relief through the incorrect method.

SSB argues that unquestionably it would have qualified for an extension at the time it sought its silent STA. SSB argues that it was literally impossible to complete construction of its digital facilities by the July 13, 2021 deadline because commercial air travel into and out of American Samoa had been suspended for the preceding 18 months. It was impossible for construction crews to reach the island during this time. All of the Station's digital equipment was on hand and ready to install and engineering personnel were committed. There was just no way to have qualified installation personnel visit the island to complete the job.

SSB maintains that it continued to operate the Station in analog right up and to the July 13, 2021, continuing to serve its viewers. This is proof, SSB argues, that it is committed to continuing to operate the Station once its digital facilities are complete. SSB notes that it has been operating the Station for 16 years and has been a vital source of news, public affairs and emergency information for the island of Pago Pago.¹³ SSB notes that travel restrictions have now been lifted and it estimates that it can complete construction of the Station's digital facilities within two months of the Commission reinstating its license and the Digital CP. SSB concludes that reinstating the Station's license and tolling the Digital CP would serve the public interest as it would permit the Station to resume operations and provide all the benefits of digital television to the viewers of Pago Pago for the first time.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to reinstate the DKBAD-LP license, reinstate the Digital CP, and waive our rules to toll the Digital CP to July 11, 2022. Although SBS allowed the Station's Digital CP to expire on July 13, 2021, we find that it did so due to a misunderstanding as to the form of relief it needed to request for the Station in

¹¹ *Id.*

¹² 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"). See *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).

¹³ SBS notes the vital role the Station plays on the island and offers to supply letters from the American Samoa Department of Homeland Security and other local leaders in support of the Station's request.

order to maintain the Station's license and Digital CP while it completed construction of its digital facilities. Had SSB requested an extension of the Station's Digital CP through a separate extension application, we find it would have qualified for such relief owing to the fact that air travel to and from the island of Pago Pago had been restricted. SSB pledges to complete construction of the Station's digital facilities following reinstatement of the Station's license so that the Station can resume operation affording its viewers all the benefits of digital television for the first time. As a vital source of over-the-air television service for the remote island of Pago Pago, we recognize the importance of reinstating the Station's license so that it can once again provide important news and public safety information to the island's residents. Ultimately, we conclude that the public interest will be served by grant of SSB's Petition.

Accordingly, the Petition for Reconsideration filed on behalf of South Seas Broadcasting, Inc. **IS GRANTED**, the license of DKBAD-LP, Pago Pago, American Samoa, **IS REINSTATED** and the digital construction permit (CDBS File No. BDFCDTL-20110627AAT) is **REINSTATED AND TOLLED to July 11, 2022**. We note that a request for extension of the Station's license under the equity and fairness provision of section 312(g)¹⁴ and/or further tolling of a Station's construction permit under section 73.3598(b) of the Commission's rules¹⁵ will not be favorably viewed unless accompanied by a showing that completion of the Station's displacement facilities was prevented by additional compelling circumstances. SSB must also include with any such request(s) a detailed plan for completing construction and returning the Station to operation.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Ronald Maines, Esq.

¹⁴ 47 U.S.C. § 312(g).

¹⁵ 47 CFR § 73.3598(b). 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.