



1000 Potomac Street N.W.
Suite 200
Washington, D.C. 20007

Main: 202.965.7880
Fax: 202.965.1729
foster.com

Direct Phone: 202.298.2527
melodie.virtue@foster.com

December 15, 2020

BY EMAIL: Larry.Hannif-Ali@fcc.gov

Larry Hannif-Ali
Media Bureau, Audio Division
Federal Communications Commission

Re: Bicoastal Media Licenses II, LLC
K297BY, Arcata, CA
Facility ID No. 200539
Construction Permit File No. BNPFT-20180319BNC
Construction Deadline: April 11, 2021

Request for Waiver of Construction Deadline

Dear Mr. Hannif-Ali:

Bicoastal Media Licenses II, LLC (“Licensee”), holds the above-captioned construction permit (“Construction Permit”) to construct the facilities of K297BY, Arcata, California. By its counsel and pursuant to *Media Bureau Announces Availability of Construction Deadline Waivers for Certain FM Translator Stations Awarded in Auctions 99 and 100*, FCC Public Notice, DA 20-1059, released September 10, 2020 (the “Public Notice”), Licensee requests waiver of the construction deadline in order to have another six months added to the end of the construction period. In the alternative, it seeks tolling of the construction period until six months after the end of the government-imposed restrictions related to the pandemic.

The Public Notice announced that the Media Bureau would accept COVID-19 related waivers of the construction period for translator permits issued to applicants who filed for new translators in the Auction 99 and 100 windows if those permits expire on or before June 30, 2021. The Construction Permit for K297BY was issued with the conditions imposed on applicants filing in an Auction window opened in connection with the *Revitalization of the AM Radio Service*, Notice of Proposed Rule Making, 28 FCC Rcd 15221, 15227, para. 14 (2013), and First Report and Order, 30 FCC Rcd 12145, 12154, para. 17 and n.43 (2015). Further, the Construction Permit’s construction period ends April 11,

2021. Consequently, the Construction Permit is covered by the waiver provisions of the Public Notice if the applicant specifies how the pandemic or its economic impact has prevented timely construction.

The impact of COVID-19 pandemic has forced Licensee to delay construction of its facilities as authorized by the Construction Permit. The Governor of California signed an Executive Order on March 4, 2020 declaring a statewide state of emergency due to the COVID-19 outbreak in California.¹ Since then, the Governor has issued dozens of Executive Orders to protect public health and safety and to mitigate the effects of the COVID-19 pandemic (collectively, the “Orders”). The Orders and subsequent economic fall-out have made work on construction infeasible. As of December 10, 2020, California surpassed 1,450,235 COVID-19 cases and 20,463 deaths statewide.² Severe limitations on business and work-from-home orders have taken their toll on local businesses having to shut down or operate with reduced capacity, and have had a significant impact on the Licensee’s ability to marshal the resources to construct the translator as authorized in the Construction Permit.

Licensee submits a waiver of the construction deadline is appropriate. Construction of K297BY has been delayed due to circumstances beyond the control of Licensee. For the health and safety of its employees, Licensee is operating with limited staff. Given the substantial drop in advertising and subsequent fall in financial resources, including a year-over-year decline of 31% in revenues and 49% decline in cash flow in the Arcata market,³ Licensee is also unable to commit resources to construction at this time. Licensee similarly has limited ability to schedule engineering and tower contractors for construction and anticipates delays will continue until after the constraints imposed to limit the spread of the virus have abated.

Even in the absence of the Public Notice, Section 73.3598(b) of the Commission’s rules provides that a construction period will toll when construction is prevented for certain “causes not under the control of the permittee” including acts of God.⁴ These are defined in terms of natural disasters. Licensee submits that a global pandemic along with the public health measures government has imposed to mitigate its impacts qualifies as a natural disaster.

Given the unique circumstances caused by the COVID-19 pandemic, Licensee’s inability to work to devote resources to construction is beyond its ability to control and should be considered an “act of God,” which serves as a basis for tolling under the Commission’s rules. In any event, Licensee requests a waiver of the construction permit deadline for six months, pursuant to FCC Public Notice 20-1059, due to the significant economic impact of the pandemic.

¹ <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/> (last visited Dec. 10, 2020).

² https://covid19.ca.gov/?utm_source=google&utm_medium=cpc&utm_campaign=ca-covid19response-august2020&utm_term=stay%20at%20home%20order&gclid=Cj0KCOiAh4j-BRCsARIsAGeV12At-BnroqGiWKJ1Vs3MRGk5PA_8MOWyDsQlzGwerjNzDP5gxghCiF0aAiEAEALw_wcB (last visited Nov. 28, 2020).

³ See attached declaration of Michael Wilson, President of the Licensee.

⁴ 47 C.F.R. § 73.3598(b) and (b)(1).

Licensee therefore submits that the public interest will be served by waiving the April 11, 2021, construction deadline until the date which is 6 months after all pandemic-related orders affecting construction of K297BY's new facilities are lifted, or, at a minimum, by waiving the April 11, 2021, deadline for six months.

Respectfully submitted,

FOSTER GARVEY PC

A handwritten signature in blue ink, appearing to read "Melodie A. Virtue", written over a horizontal line.

Melodie A. Virtue

Counsel for Bicoastal Media Licenses II, LLC

DECLARATION

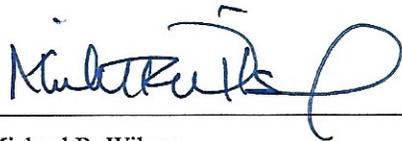
I, Michael R. Wilson, hereby declare under penalty of perjury as follows:

I am President of the Bicoastal Media Companies which are requesting tolling or waiver of the construction periods for its FM translator construction permits as a result of the COVID-19 pandemic impact on our business.

Our year-over-year revenues and cash flow are down by the percentages listed in the chart below for the applicable markets in which we have constructions permits outstanding for fill-in translators.

<u>Market</u>	<u>Revenue %</u>	<u>Cashflow %</u>
Fort Bragg, CA	-26%	-54%
Longview, WA	-17%	-28%
Arcata, CA	-31%	-49%
Corvallis, OR	-11%	-23%
Coos Bay, OR	-29%	-41%
Ukiah, CA	-26%	-54%
Ashland, OR	-32%	-57%
Eureka, CA	-31%	-49%

The foregoing is true and correct based on my personal knowledge or based on information provided to me from our employees.



Michael R. Wilson
President

Dated: December 10, 2020