

November 1, 2021

VIA EMAIL DELIVERY to Victoria.McCauley@fcc.gov

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554
Attn: Audio Division, Media Bureau

Re: K291CT, Duncan, OK
Facility ID No. 200286
Construction Permit File No. [BNPFT-20171201ANT](#)
Original Construction Deadline: January 5, 2021

K244FW, Lawton, OK
Facility ID No. 202253
Construction Permit File No. [BNPFT-20180418ABU](#)
Original Construction Deadline: May 14, 2021

Status Report and Request for Continued Waiver of Construction Deadlines

Dear Ms. Dortch:

Mollman Media, Inc. (“Mollman”) holds the above-captioned construction permits (“Construction Permits” or “Stations”) to construct the facilities of K291CT, Duncan, OK and K244FW, Lawton, OK. Pursuant to Sections 1.3 and 73.3598(b) of the Commission’s Rules,¹ Mollman requested tolling of the respective construction periods for the Construction Permits. By Letter 1800B3-VM dated December 11, 2020,² the Commission denied the tolling request and instead granted waiver of the construction deadlines for the Construction Permits, finding that “rare and exceptional circumstances beyond the permittee’s control”³ existed due to the pendency of litigation. As the litigation that gave rise to the original tolling request remains unresolved, Mollman hereby requests continued waiver treatment and asks that the

¹ 47 C.F.R. §§ 1.3, 73.3598(b).

² See Letter from Albert Shuldiner, Chief, Audio Division, Media Bureau, 1800B3-VM (Dec. 11, 2020).

³ See 1998 Biennial Regulatory Review—Streamlining of Mass Media Application Rules and Processes, Report and Order, 13 FCC Rcd 23056 (1998), *recon. granted in part and denied in part*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17541 (1999).

deadlines to construct the facilities be waived for an additional six months each.⁴

Mollman's original request for tolling of the construction period deadline was based on the lawsuit it commenced on July 16, 2019, after its acquisition of the Stations (as well as a number of other broadcast stations, including the primary stations for the Stations) from Perry Broadcasting of Southwest Oklahoma, Inc. (Perry).⁵ In that action, which seeks to rescind the transaction, Mollman alleges that there were false and material misrepresentations of fact made to Mollman to induce it to buy the stations and other fraudulent conduct by Perry.⁶ Mollman argues that Perry's conduct is such that the transaction should be ordered undone, with the parties returned to their positions prior to the sale.⁷ The pending lawsuit asks the Court to order that the stations be returned to Perry in exchange for the return of the purchase price paid by Mollman for all of the stations, including the Construction Permits.⁸ Due to COVID and other reasons, including delays initiated by Perry, the trial on this case has not yet occurred. Discovery is scheduled to be completed by December 1, 2021 and the parties are scheduled to be assigned a trial date at a pre-trial conference to be held on March 7, 2022.⁹

As the litigation seeks to return the parties to their position prior to the sale, if Mollman builds these unbuilt translators, the Stations will not be in the condition that they were in at the time of the sale. There may be questions as to whether Mollman will be able to recover any of the construction costs, and whether that would affect the ability of Mollman to return the assets in the condition that existed at the time of the sale. The ongoing cause of action relates to the legal rights to construct and operate the Stations, which justifies continued waiver treatment of the Stations' construction deadlines while the litigation unfolds.

Mollman would suffer an extreme hardship if it were forced to construct the translators not knowing if it will be able to operate the translators or to recover its construction costs from the litigation, and whether the construction could in some way affect the ability of the Court to grant the requested rescission of the transaction. This could create administrative inefficiencies and add layers of additional burden on the court system that would be avoided altogether by granting the instant waiver extension, allowing the permits to remain in the state in which they were received by Mollman. Mollman therefore submits that the public interest will be served by waiving the respective construction deadlines for the Construction Permits until the litigation is resolved.

Sincerely,

/s/

David D. Oxenford

Counsel for Mollman Media, Inc.

⁴ Per email from FCC staff on June 14, 2021, K291CT and K244FW are receiving continued waiver treatment through December 11, 2021 and December 14, 2021 respectively.

⁵ See File No. BALH-20181220AAW (granted Feb 15, 2019, consummated April 9, 2019).

⁶ Case No. CJ-2019-139R, District Court of Stephens County, State of Oklahoma.

⁷ *Id.*

⁸ *Id.*

⁹ An Order from the Court is attached indicating defendant Perry Broadcasting of Southwest Oklahoma, Inc., moved to extend the discovery deadline and pre-trial conference date. See Exhibit A.

IN THE DISTRICT COURT OF STEPHENS COUNTY
STATE OF OKLAHOMA

FILED DISTRICT COURT
Stephens County, Okla.

MOLLMAN MEDIA, INC., an Oklahoma
Corporation; PAS PROPERTIES LLC, an
Oklahoma limited liability company; and
THE TOWER COMPANY, LLC, an
Oklahoma limited liability company;

Plaintiffs,

v.

PERRY PUBLISHING & BROADCASTING
COMPANY, INC. (SIC. PERRY BROADCASTING)
COMPANY, Inc.), an Oklahoma corporation; et al.

Defendants.

OCT 19 2021

MELODY HARPER
Court Clerk

Case No. CJ-2019-139R

ORDER

This matter came on for hearing this 15th day of October, 2021 pursuant to Defendants' respective Motion for Leave to Amend their Counterclaim; and Defendants' Motion to Extend the Discovery Deadline and Pretrial Conference date, etc., as further set forth in said motion. Upon reviewing the briefs and hearing the arguments of counsel, Defendants' motions are granted.

The Court Orders as follows:

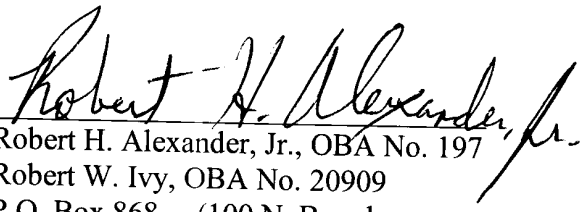
1. Defendants are granted leave to amend their counterclaim.
2. Matthew Mollman is ordered to be re-presented for deposition for a maximum of no more than three (3) hours.
3. Discovery shall be completed by December 1, 2021.
4. This matter is set on the Court's March 7, 2022 Pretrial Conference docket at 3:00 p.m.
5. The remaining deadlines of this Court's Amended Scheduling Order dated 1-15-21 shall remain unaffected.

IT IS SO ORDERED this 19th day of October, 2021


DISTRICT COURT JUDGE

Submitted by:

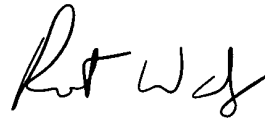
**The Law Office of
Robert H. Alexander, Jr., p.c.**


Robert H. Alexander, Jr., OBA No. 197
Robert W. Ivy, OBA No. 20909
P.O. Box 868— (100 N. Broadway
BancFirst Tower 15th Floor)
Oklahoma City, Oklahoma 73101-0868
(405) 232-0803 – telephone
(405) 232-0519 – facsimile
ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of October, 2021, a true and correct copy of the above and foregoing **Order** was sent by electronic mail to:

Randon J. Grau
Patrick L. Neville, Jr.
CHEEK & FALCONE, PLLC
6301 Waterford Blvd., Suite 320
Oklahoma City, OK 73118-1168
RGrau@CheekFalcone.com



Robert W. Ivy