

November 11, 2020

VIA EMAIL DELIVERY

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554
Attn: Audio Division, Media Bureau

Re: K291CT, Duncan, OK
Facility ID No. 200286
Construction Permit File No. BNPFT-20171201ANT
Construction Deadline: January 5, 2021

K244FW, Lawton, OK
Facility ID No. 202253
Construction Permit File No. BNPFT-20180418ABU
Construction Deadline: May 14, 2021

Request for Tolling of Construction Permits

Dear Ms. Dortch:

Mollman Media, Inc. (“Mollman”) holds the above-captioned construction permits (“Construction Permits”) to construct the facilities of K291CT, Duncan, OK and K244FW, Lawton, OK. By its counsel and pursuant to Sections 1.3 and 73.3598(b) of the Commission’s Rules,¹ Mollman hereby requests tolling of the respective construction periods for the Construction Permits.

Section 319(b) of the Communications Act of 1934, as amended, provides that a construction permit “will be automatically forfeited if the station is not ready for operation within the time specified or within such further time as the Commission may allow, *unless prevented by causes not under the control of the grantee.*”² The Commission has established

¹ 47 C.F.R. §§ 1.3, 73.3598(b).

² 47 U.S.C. § 319(b) (emphasis added).

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procedures for tolling the construction period for construction permits when warranted.³ Specifically, Section 73.3598(b) provides that a construction period will toll when construction is prevented for certain “causes not under the control of the permittee.”⁴ To receive tolling, a permittee must demonstrate that it could not build due to a Commission-recognized encumbrance and that the permittee has had, in total, less than three unencumbered years to construct the facility.⁵ Included among the conditions that justify tolling of a construction permit is where “construction is delayed by any cause of action pending before any court of competent jurisdiction relating to any necessary local, state or federal requirement for the construction or operation of the station.”⁶ As set forth below, an action is pending in local courts in Oklahoma that directly affects the construction and operation of these stations.

Mollman recently acquired the Construction Permits and a number of other broadcast stations, including the proposed primary stations for each of these translators, from Perry Broadcasting of Southwest Oklahoma, Inc. (“Perry”). See FCC File No. BALH-20181220AAW (granted Feb 15, 2019, consummated April 9, 2019). However, the transaction by which these stations were sold to Mollman is now the subject of pending litigation, as Mollman filed an action against Perry to rescind the transaction based on allegations that there were false and material misrepresentations of fact made to Mollman to induce it to buy the stations and other fraudulent conduct on the part of Perry.⁷ The complaint in this proceeding argues that the conduct of the Seller is such that the transaction should be ordered undone, with the parties returned to their positions prior to the sale. The pending lawsuit asks that the Court 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 these translator construction permits.⁸

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

³ 47 C.F.R. § 73.3598(b); see also *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes*, Report and Order, 13 FCC Rcd 23056 ¶¶ 83-90 (1998) (“*Streamlining R&O*”); *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525 ¶¶ 31-45 (1999) (“*Streamlining MO&O*”).

⁴ 47 C.F.R. § 73.3598(b).

⁵ *Wendell & Associates Request to Waive the Period to Construct Unbuilt Station WKNJ(AM)*, *Harriman, New York*, Memorandum Opinion and Order, 17 FCC Rcd 18576, n.13 (2002).

⁶ 47 C.F.R. § 73.3598(b)(2).

⁷ Case No. CJ-2019-139R, District Court of Stephens County, State of Oklahoma.

⁸ A scheduling order from the Court is attached indicating that a scheduling conference to set the trial date is set for March 1, 2021. See Exhibit A.

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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. Clearly, there is a cause of action pending in Oklahoma courts that relates to the legal rights to construct and operate the stations, which justifies tolling these construction permits while the litigation continues.⁹ As such, the pending litigation with Perry as described above should serve as a basis of tolling of the Construction Permits.

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 tolling request which allow 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 tolling the respective construction deadlines for the Construction Permits until the date the litigation is resolved.¹⁰

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

/David D. Oxenford/

David D. Oxenford

Kelly Donohue

Mollman Media, Inc.

cc: Tom Hutton
Victoria McCauley

⁹ See n. 6, supra.

¹⁰ Tolling should start from the commencement of the lawsuit, July 16, 2019, until the proceeding is completed.

IN THE DISTRICT COURT OF STEPHENS COUNTY
STATE OF OKLAHOMA

FILED DISTRICT COURT
Stephens County, Okla.
SEP - 1 2020
MELODY HARPER
Court Clerk

MOLLMAN MEDIA, INC., et al.,

Plaintiffs,

Case No. CJ-2019-139R

v.

PERRY PUBLISHING & BROADCASTING
COMPANY, INC., et al.,

Defendants.

SCHEDULING ORDER

THIS ORDER is entered this ____ day of _____, 2020.

Counsel have discussed with the Court their respective need for adequate discovery time, complexity of legal issues to be addressed, and their caseload in arriving at this agreed Scheduling Order.

IT IS ORDERED that the following must be completed within the time fixed:

1. Neither JOINDER OF ADDITIONAL PARTIES nor AMENDMENT TO THE PLEADINGS may be filed after 10/16/2020
2. DISCOVERY: Must be completed by: 3/1/2021
3. ALL DISPOSITIVE MOTIONS: Must be filed by: 3/1/2021
or will not be considered. Motions *In Limine* are excepted.
4. PRE-TRIAL ORDER and REQUESTED JURY INSTRUCTIONS must be submitted ten days prior to Pre-Trial.
5. PRE-TRIAL CONFERENCE DATE & TIME: 10:00 a.m., March 1, 2021
6. TRIAL DATE: To be set at PTC
7. ESTIMATED TIME OF TRIAL: 4-5 days
8. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW:
(Non-Jury) Must be filed by: N/A


9. TRIAL BRIEF: Must be filed by: As directed by Court.
10. Jury Trial demanded by ☒ Plaintiff / ☐ Defendant.
11. Jury Fee must be paid by ☒ Plaintiff / ☐ Defendant within no later than the date of the Pre-Trial Conference. Failure to pay jury fee as ordered will result in striking the case from the trial date above indicated and losing its position on that trial docket.
12. Preliminary Witness & Exhibit lists exchanged by: 12/01/2020
13. Final Witness & Exhibit lists exchanged by: 1/20/2021
14. ADDITIONALLY ORDERED:
Plaintiffs to disclose expert witness(es) by 11/1/2020; Defendants to disclose expert witness(es) by 12/1/2020
mediation ordered. To be completed by PT Conf.

IT IS ORDERED that no date set by this Order can be changed except for good cause and upon written Order of this Court prior to the date scheduled. Discovery will not be extended beyond the Pre-Trial Conference.

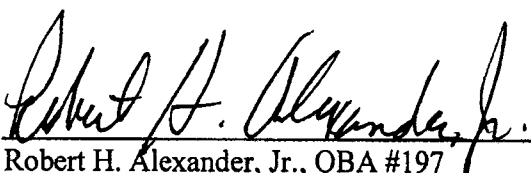


JUDGE OF THE DISTRICT COURT

We have presented to the Court our views of time requirements established by the Scheduling Order.



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