



Federal Communications Commission
Washington, D.C. 20554

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Washburn University of Topeka
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KSQA, LLC
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Re: KSQA, Topeka, KS
File No. BMPCDT-20110103AAE and
BMPCDT-20110223ABN
Request for Tolling
Facility ID 166546

Dear Counsel:

This concerns the February 18, 2011 "Opposition to Request for Tolling" (Opposition) filed by Washburn University of Topeka (Washburn), licensee of noncommercial educational television station KTWU, Topeka, Kansas, opposing the February 7, 2011 request by KSQA, LLC (KSQA) to toll the expiration date for the digital television construction permit (File No. BMPCDT-20110103AAE) for KSQA, Topeka, Kansas.¹ The tolling request was granted one day earlier on February 17, 2011, and therefore, we will treat Washburn's Opposition as a petition for reconsideration. For the reasons set forth below, we deny reconsideration and grant KSQA's above-referenced subsequent modification application (filed February 23, 2011).

KSQA filed a modification application on January 3, 2011 to specify a site on the Jayhawk building in Topeka. This application was granted on January 18, 2011, with an expiration date of February 10, 2011. By letter dated February 7, 2011, KSQA requested that the expiration date be tolled because on January 26, 2011, Washburn filed a petition for reconsideration of the grant. In its February 17, 2011 letter granting tolling, the Video Division stated that "Because Washburn filed a petition for reconsideration of the grant of the station's digital construction permit, we find that KSQA qualifies for tolling under 73.3598(b)(2) of the rules. Further, we believe the public interest will be served by tolling the station's DTV construction deadline until final action on the petition for reconsideration."

In its Opposition, Washburn argues that the KSQA modified construction permit is not eligible for tolling because "rather than being an original permit, the permit for this station has been assigned, extended, modified, and modified again" Furthermore, Washburn argues that the facilities specified in the construction permit "cannot be implemented because the permittee never had an arrangement to use the site"

Washburn cites no cases in support of its assertion that the construction permit granted on January 18, 2011 is not eligible for tolling, and we disagree that the tolling provisions of Section 73.3598(b) of the rules are not applicable here. Tolling "stops the clock" with respect to a permittee's

¹ Also before us is KSQA's Reply filed February 23, 2011.

original three-year construction period.² The construction permit granted on January 18, 2011 is a construction permit for an unbuilt station and therefore subject to tolling. In addition, Washburn's filing of a petition for reconsideration of the grant of that construction permit qualifies as a tolling event under Section 73.3598(b). As for Washburn's arguments regarding the availability of the tower site location specified in the construction permit, we note that KSQA has located a new tower site and filed a modification application on February 23, 2011 specifying this new location. That application complies with our technical rules, is unopposed and therefore, we will grant it.³ In view of the foregoing, Washburn's arguments regarding the Jayhawk Building site are moot.

The above facts considered, Washburn's Opposition to Tolling Request, being treated as a petition for reconsideration of the Division's February 17, 2011 letter granting tolling, IS DENIED and KSQA's modification application (File No. BMPCDT-20110223ABN) for KSQA, Topeka, Kansas, IS GRANTED. In addition, the petition filed by Washburn seeking reconsideration of the grant of KSQA's application specifying the Jayhawk Building (File No. BMPCDT-20110103AAE) IS DISMISSED AS MOOT.

Sincerely,

Barbara A. Kreisman, Chief
Video Division
Media Bureau

² *KSBN Radio, Inc.*, 19 FCC Rcd 20162, 20165 (2004).

³ We note that KSQA shall only have the remaining time left on its construction permit (24 days) to complete construction of the facilities specified in the February 23rd application.