

October 19, 2020

VIA EMAIL DELIVERY

Attn: *Larry Hannif-Ali, Audio Division, Media Bureau*
Larry.Hannif-Ali@fcc.gov

Re: *Gold Coast Broadcasting, LLC*
K245CL, Lancaster, CA
Facility ID No. 143699
Construction Permit File No. BPFT-20170329ABP

K294DA, Rosamond, CA
Facility ID No. 143644
Construction Permit File No. BPFT-20170410AGC

K287AL, Mojave, CA
Facility ID No. 156359
Construction Permit File No. BPFT-20161021ABN

High Desert Broadcasting, LLC
K272FI, Lancaster, CA
Facility ID No. 156050
Construction Permit File No. BPFT-20170410AGP

K259BD, Rosamond, CA
Facility ID No. 143757
Construction Permit File No. BPFT-20170410AGO

*Tolling Status Report and Request for Waiver and/or Tolling of
Construction Permit Deadlines*

Dear Mr. Hannif-Ali:

Commonly-controlled licensees Gold Coast Broadcasting, LLC and High Desert Broadcasting, LLC (collectively, "Licensee") hold the respective above-captioned construction permits. By its counsel and pursuant to Sections 1.3 and 73.3598(b) of the Commission's

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Rules,¹ Licensee hereby updates the Commission regarding the status of the tolling circumstances and requests a waiver of the construction period deadline for the above-referenced construction permits pursuant to the Commission's guidance issued in the Public Notice released on September 10, 2020 ("Public Notice").²

In April 2020, Licensee filed requests for tolling of the Construction Permits based on the impact of the COVID-19 pandemic ("Tolling Requests"). As explained in the Tolling Requests, the pandemic forced the Licensee to stop work on the modification of its facilities when a California government order ("California Executive Order") issued on March 19, 2020, ordering California residents to stay at home as a measure to help slow the spread of the COVID-19 virus. The California Executive Order made further work difficult (and not desirable, for public safety reasons). Because of this Act of God, Licensee asserted that tolling of the Construction Permits would be appropriate. The Commission granted Licensee's Tolling Requests by letters dated April 21, 2020 (for K287AL and K294DA) and April 22, 2020 (for K245CL, K259BD, and K272FI), asking Licensee to provide any updates on construction progress by October 21st and October 22nd, respectively.³

To date, Licensee's efforts to resume and complete the construction of the permitted facilities remain frustrated due to continued delays caused by COVID-19. In the Public Notice, the Bureau noted that it may in appropriate cases grant a waiver of the construction deadline based on "rare and exceptional circumstances beyond the permittee's control,"⁴ holding that, to

¹ 47 C.F.R. §§ 1.3, 73.3598(b).

² See *Media Bureau Announces Availability of Construction Deadline Waivers for Certain FM Translator Stations Awarded in Auctions 99 and 100*, Public Notice, DA 20-1059 (MB rel. Sept. 10, 2020). While the permits in the instant case were not Auction 99 or Auction 100 permits, they were granted pursuant to the Commission's ongoing AM revitalization efforts. See e.g. *Revitalization of the AM Radio Service, First Report and Order*, 30 FCC Rcd 12145 (2015). As such, granting waivers of the instant permits would be consistent with the policy goals underlying waivers of construction permits awarded in Auctions 99 and 100 and should therefore be processed similarly. To the extent tolling is the more appropriate processing vehicle, Licensee in the alternative requests continued tolling of the permits under Section 73.3598(b)(1) of the Commission's rules, which provides that the period of construction for an original construction permit shall toll when construction is prevented by causes not under the control of the permittee, including when construction is prevented due to "an act of God." The COVID-19 pandemic is, without a doubt, an "act of God."

³ See *Letters from Al Shuldiner to Kelly Donohue*, Ref. 1800B3-VM (April 21 and 22, 2020).

⁴ 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). Good cause to waive a rule may be found and a waiver granted "where particular facts would make strict compliance inconsistent with the public interest." *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *ICO Global Commc'ns (Holdings) Ltd. v. FCC*, 428 F.3d 264, 269 (D.C. Cir. 2005) (quoting

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the extent the COVID-19 pandemic has hindered the ability of an applicant to construct its translator facilities, those specific difficulties would constitute such a rare and exceptional circumstance beyond the permittee's control. Such circumstances are present in the instant case.

Like many similarly-situation radio station owners, Licensee's operations have been severely impacted by the pandemic.⁵ The stations that are the subject of this request are in Los Angeles and Kern Counties, which remain among the most severely impacted counties in California. Advertising revenues in Southern California have dropped by well over 50% across the entire industry, forcing Licensee and its affiliates to reduce its staff and delay or cut projects altogether for financial reasons. For example, Licensee and its commonly-controlled stations have been forced to scale full-time staff back by over two-thirds as a result of the financial impact of COVID-19. All of the Licensee's remaining human and financial resources are now dedicated to simply keeping the stations on the air. Moreover, COVID-related precautions have slowed down Licensee's operations immensely. Even basic tasks take much longer to accomplish due to restrictions on the number of individuals that can be in an indoor space at a given time and the fact that key personnel are working from home because they are in higher risk categories. All of the translator sites are located in Southern California, which continues to be subject to the most stringent restrictions in the state due to its high risk level.⁶

In addition, key technical contractors necessary to construct these facilities have been severely impacted as well. Many of such contractors Licensee works closely with have restricted their work travel due to the fact that they are in a higher risk category, further slowing progress on building out the permitted facilities. Finally, while the permitted facilities were not damaged by California's recent wildfires, Licensee's already-stretched resources have been further diverted to address issues caused by the fires throughout Southern California. Significant resources have also been devoted to covering the upcoming elections.

Northeast Cellular); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969) (*WAIT Radio*). To make this public interest determination, the waiver cannot undermine the purposes of the rule, and there must be a stronger public interest benefit in granting the waiver than in applying the rule. *See, e.g., Northeast Cellular*, 897 F.2d at 1166; *WAIT Radio*, 418 F.2d at 1157.

⁵ See Exhibit A, Declaration of John Hearne.

⁶ See Exhibit B. The county's risk level is based on its test positivity and adjusted case rate.

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For these reasons, Licensee submits that the public interest will be served by waiving and/or tolling construction deadlines for the Construction Permits by an additional six months.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

/David D. Oxenford/

David D. Oxenford

Counsel for Gold Coast Broadcasting, LLC
and High Desert Broadcasting, LLC

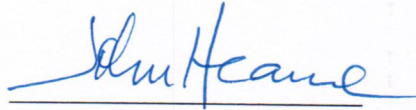
Attachments

Exhibit A

DECLARATION OF JOHN HEARNE

I, John Hearne, President of Member of commonly-controlled licensees Gold Coast Broadcasting, LLC and High Desert Broadcasting, LLC (collectively, "Licensees") hereby declare under penalty of perjury that I have read the forgoing and that it is true and correct to the best of my knowledge, information and belief.

Signed and dated this 19th day of October, 2020.

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

John Hearne

Exhibit B
Screen Shot of covid19.ca.gov/safer-economy/

covid19.ca.gov/safer-economy/

Blueprint for a Safer Economy

Last updated October 5, 2020 at 4:11 PM

California has a blueprint for reducing COVID-19 in the state with revised criteria for loosening and tightening restrictions on activities.

Find the status of activities in your county

County

Los Angeles

Activity

Enter a business or activity

GET LATEST STATUS

Los Angeles

WIDESPREAD

Many non-essential indoor business operations are closed. [Understand the data.](#)

Counties can restrict further. Check your [county's website](#).

County risk level	Adjusted cases	Positivity rate
<div>WIDESPREAD</div> <div>Many non-essential indoor business operations are closed</div>	<div>More than 7</div> <div>Daily new cases (per 100k)</div>	<div>More than 8%</div> <div>Positive tests</div>
<div>SUBSTANTIAL</div> <div>Some non-essential indoor business operations are closed</div>	<div>4-7</div> <div>Daily new cases (per 100k)</div>	<div>5 – 8%</div> <div>Positive tests</div>
<div>MODERATE</div> <div>Some indoor business operations are open with modifications</div>	<div>1 – 3.9</div> <div>Daily new cases (per 100k)</div>	<div>2 – 4.9%</div> <div>Positive tests</div>
<div>MINIMAL</div> <div>Most indoor business operations are open with modifications</div>	<div>Less than 1</div> <div>Daily new cases (per 100k)</div>	<div>Less than 2%</div> <div>Positive tests</div>

Current tier assignments as of September 29, 2020

All data and tier assignments are updated weekly every Tuesday.

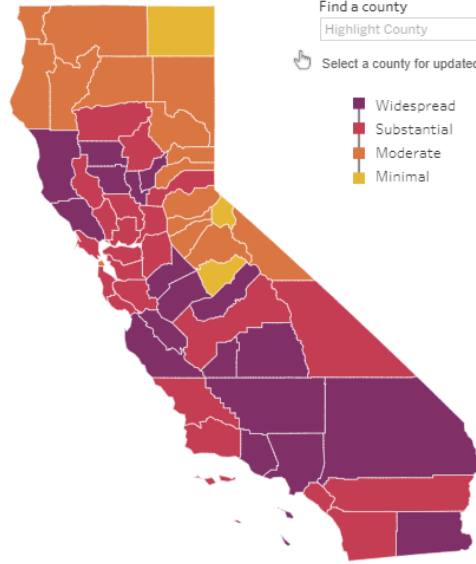
Statewide metrics

7.0

New COVID-19 positive
cases per day per 100K

3.4%

Positivity rate



Find a county

Highlight County

Select a county for updated metrics

- Widespread
- Substantial
- Moderate
- Minimal

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