



Federal Communications Commission  
Washington, D.C. 20554

May 14, 2019

Red River Broadcast Co., LLC  
P.O. Box 9115  
Fargo, ND 58106

Re: Request for Tolling Waiver  
KDLT-TV, Sioux Falls, SD  
Facility ID No. 55379  
LMS File No. 0000072207

Dear Licensee,

On April 29, 2019, Red River Broadcast Co., LLC (Red River), the licensee of KDLT-TV, Sioux Falls, South Dakota (KDLT or Station), filed the above-referenced request for waiver of the Commission's tolling provisions for the Station's construction permit expiration date. For the reasons below, we grant Red River's request and toll the expiration date of KDLT's construction permit through August 30, 2019.

*Background.* Pursuant to Section 73.3700(b)(5) of the Commission's rules (Rules), a station that was assigned a new channel as a result of the Commission's incentive auction and repacking process may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.<sup>2</sup> The Commission's tolling provisions provide that a construction permit deadline may be tolled under specific circumstances such as acts of God, delays due to administrative or judicial review, or construction that is delayed by any cause of action pending before a court of competent jurisdiction relating to any necessary local, state, or federal requirement for the construction or operation of the station, including any zoning or environmental requirement.<sup>3</sup> If a station does not qualify for tolling under these criteria, good cause may exist to waive the Commission's tolling provisions and tolling may still be warranted where the licensee can demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.<sup>4</sup>

Red River requests waiver of the tolling rules and tolling of its construction permit for its post-incentive auction channel facilities to August 30, 2019. Red River states that it will not be able to complete construction of its permanent post-auction channel facility by its current construction permit expiration date of May 29, 2019, for reasons beyond Red River's control: (1) poor weather conditions and

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</sup> See 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (recognizing that there may be "rare and exceptional circumstances" beyond the control of the licensee that do not fall under the tolling provisions, but "which would warrant the tolling of construction time." The Commission concluded that in such "limited circumstances," it would entertain requests for waiver of its "strict tolling provisions"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

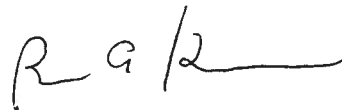
(2) a lack of access to tower construction resources. Red River maintains that it was “an especially brutal winter” in and around Sioux Falls, South Dakota this season and that KDLT was unable to complete its channel change on time because its tower company (Tower King II) withdrew from the area on November 13, 2018, having determined that weather conditions were too unsafe to allow its personnel to complete work on the KDLT tower structure. Red River states that its tower work company has committed informally to being on site to begin the final work on the KDLT’s antenna system by approximately mid-June. Finally, Red River argues that grant of its waiver request would serve the public interest in preservation of television station broadcasting service including to rural areas. In addition, Red River argues, this brief delay in completing the construction of KDLT’s permanent facilities would delay the post-auction transition process because KDLT ceased operating on its pre-auction channel in October 2018. KDLT is currently operating its post auction channel facilities pursuant to an STA.<sup>5</sup>

*Discussion.* Upon review of the facts and circumstances presented, we find that rare and exceptional circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station’s construction permit to August 30, 2019. Specifically, poor weather conditions in the Sioux Falls, South Dakota area and a lack of access to necessary tower construction resources contributed to the Station not being able to complete construction by its construction permit deadline. We also find that grant of Red River’s waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KDLT has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station’s construction permit.

We remind Red River that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs “reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other.” Additional expenses incurred, such as expenses resulting from changes in a Station’s transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Red River Broadcast Co., LLC’s request for waiver of the Commission’s tolling provisions **IS GRANTED**. The construction permit for KDLT-TV, Sioux Falls, South Dakota **IS TOLLED to August 30, 2019**. Grant of this tolling waiver does not permit KDLT to recommence operation on its pre-auction channel. We also remind Red River that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission’s tolling provisions.<sup>6</sup>

Sincerely,

A handwritten signature in black ink, appearing to read "R A / 2", followed by a horizontal line.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Charles Naftalin, Esq.

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<sup>5</sup> See LMS File No. 0000072468.

<sup>6</sup> See 47 § CFR 73.3598(b).