



Federal Communications Commission  
Washington, D.C. 20554

January 6, 2020

Parker Broadcasting of Dakota License, LLC  
Ravi Kapur  
2118 Walsh Avenue  
Suite 208  
Santa Clara, CA 95050

Re: Request for Tolling Waiver  
KRDK-TV, Valley City, ND  
Facility ID No. 49134  
LMS File No. 0000093167

Dear Licensee,

On December 11, 2019, Parker Broadcasting of Dakota License, LLC (Parker), the licensee of KRDK-TV, Valley City, North Dakota (KRDK or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant Parker's request and toll the expiration date of KRDK's construction permit to June 15, 2020.

*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>

Parker requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to June 15, 2020. KRDK is currently operating on its post-auction

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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).

channel with temporary facilities.<sup>5</sup> KRDK was previously granted a construction permit extension through December 18, 2019.<sup>6</sup> Parker states that construction delays have prevented the completion of the Station's post-auction channel facilities that are housed on a tower that is over 2,000 feet tall. The Station's tower crew had been working steadily from the start of October 2019 until the end of November 2019 when winter weather set in, thus preventing the tower crew from continuing to do work without delaying other installation jobs. In order to complete construction KRDK's tower crew needs approximately two weeks of "workable construction weather." Parker expects that its tower crew will be able to resume construction activities in April 2020 following the end of the winter season. Therefore, Parker requests tolling to June 15, 2020.

*Discussion.* Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station's construction permit to June 15, 2020. We find that construction delays due to weather have prevented timely completion of the Station's post-auction channel facilities. We also find that grant of Parker's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KRDK has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive KRDK's signal while it operates using its interim facility, we believe that Parker has every incentive to ensure viewers are fully informed about the Station's transition plan. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind Parker 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."<sup>7</sup> 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, Parker Broadcasting of Dakota License, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000028708) for KRDK-TV, Valley City, North Dakota **IS TOLLED to June 15, 2020**. Grant of this tolling waiver does not permit KRDK to recommence operation on its pre-auction channel. We also

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<sup>5</sup> See LMS File No. 0000093169. KRDK was repacked from channel 38 to 24.

<sup>6</sup> See LMS File No. 0000074755.

<sup>7</sup> 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

remind Parker that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>8</sup>

Sincerely,

A handwritten signature in dark ink, appearing to read 'Barbara A. Kreisman', with a long, sweeping horizontal line extending to the right.

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Dennis P. Corbett, Esq.

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<sup>8</sup> See 47 § CFR 73.3598(b).