



Federal Communications Commission
Washington, D.C. 20554

January 6, 2020

Univision Local Media, Inc.
Christopher G. Wood
5999 Center Drive
Los Angeles, CA90045

Re: Request for Tolling Waiver
KXLK-CD, Austin, TX
Facility ID No. 48836
LMS File No. 0000093546

Dear Licensee,

On December 17, 2019, Univision Local Media, Inc. (Univision), the licensee of KXLK-CD, Austin, Texas (KXLK-CD 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 Univision's request and toll the expiration date of KXLK-CD's construction permit to June 18, 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.¹ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.² 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.³ 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.⁴

Univision requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to June 18, 2020. KXLK-CD ceased operations on its pre-auction channel and is currently silent.⁵ KXLK-CD was previously granted a construction permit extension

¹ See 47 CFR § 73.3700(b)(5).

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

³ *Id.*

⁴ 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).

⁵ See LMS File No. 0000075307. KXLK-CD was repacked from channel 23 to channel 14.

through December 18, 2019.⁶ KXLK-CD states that its pre-auction tower failed structural analysis and Univision was required to find an alternate tower. Univision states the Station has entered into a lease for its new tower and made significant progress toward building out its post-auction channel facility. Univision anticipates final construction to be completed sometime in April 2020. Univision further states that KXLK-CD will require land mobile interference testing on channel 14 that cannot commence until the permanent antenna is installed. In order to complete construction and conduct the necessary testing, Univision requests tolling to June 18, 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 18, 2020. Univision has demonstrated it did not complete construction of its post-auction channel facilities due tower issues and the need to conduct channel 14 land mobile radio interference testing. We also find that grant of Univision's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KXLK-CD has already ceased operation on its pre-auction channel and is silent. To the extent viewers are unable to receive KXLK-CD's signal while it is silent, we believe that Univision 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 Univision 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."⁷ 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, Univision Local Media, Inc's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000030593) for KXLK-CD **IS TOLLED to June 18, 2020**. Grant of this tolling waiver does not permit KXLK-CD to recommence operation on its pre-auction channel. We also remind Univision that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Matthew S. Delnero, Esq.

⁶ See LMS File No. 0000068562.

⁷ 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.").

⁸ See 47 § CFR 73.3598(b).