



Federal Communications Commission
Washington, D.C. 20554

October 19, 2021

Delta Media Corporation
3501 N.W. Evangeline Thruway
Carencro, LA 70520
charles@delta-network.com
(via electronic mail)

Re: Request for Tolling Waiver
KXKW-LD, Lafayette, LA
Fac ID No. 167775
LMS File No. 0000160014

Dear Licensee,

This concerns a request for waiver of the Commission's tolling provisions and tolling of construction permit expiration date (Request), as amended, filed by Delta Media Corporation (DMC), licensee of low power television station KXKW-LD, Lafayette, Louisiana (KXKW-LD or Station). For the reasons below, we grant DMC's Request and toll the expiration date of the Station's construction permit 60 days to December 3, 2021.

Background. Requests for additional time to construct modified digital low power television facilities are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.¹ 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.² 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.³

Request For Tolling Waivers. The Station's digital channel 32 facilities were displaced by the Incentive Auction and repacking process when WBXH-CD, Baton Rouge, Louisiana was repacked to channel 32. DMC filed displacement application requesting new digital channel 30 in the Commission's displacement application filing window for displaced low power television stations that were displaced by

¹ See 47 CFR § 73.3598(b).

² *Id.*

³ 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) (*Streamlining MO&O*) (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).

that was granted on October 2, 2018 (Displacement CP) with an expiration date of October 2, 2021.⁴ Because it has yet to receive notification from WBHX-CD to discontinue operations, the Station is continuing to operate on channel 32 while it completes construction of its displacement channel 30 facilities.

DMC states that has taken steps to construct the Station's displacement facilities. DMC states that it started the process of ordering equipment in 2019 and finalized its order for a transmitter in March 2020 and antenna in July 2020, after technical revisions for the antenna and tower mounting were resolved. However, DMC has encounter numerous construction delays throughout its efforts. Since the grant of the Displacement CP, DMC states that from 2019 through 2021 numerous Hurricanes (notably Hurricanes Barry, Laura, Delta, Ida and Nicholas) caused damage to the greater Lafayette area resulting in disruptions to power and communication networks, along with shortages to fuel supplies and goods and services. DMC states that it took several months for these conditions to recover following each storm. In addition, DMC states that construction was delayed throughout 2020 due to the COVID-19 pandemic. Lockdowns and travel restrictions in Louisiana and neighboring Texas caused numerous delivery delays, shortages of goods and materials, travel restrictions, and restrictions pertaining to person to person contact within businesses. DMC reports that while the Station's transmitter was delivered in June 2020, due to the aforementioned delays caused by the COVID-19 pandemic, its antenna was not delivered until March 2021.

DMC goes on to state that it was recently informed that, due to the death of a family member, the tower company that DMC is working with needs to briefly postpone all tower projects. DMC notes that the Station's facilities are to be located on a tower at 900 to 950 feet above ground and therefore requires a specialized tower crew. Delta anticipates that it will take approximately two weeks from the time the tower crew arrives on site to complete construction. Based on the foregoing, DMC requests that the Commission waive its tolling rules and toll its construction permit for 60 days.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of the Displacement CP to December 3, 2021.⁵ DMC has demonstrated that it has been diligently making progress towards completion of the Station's displacement facilities but was unable to complete construction due construction delays caused by hurricanes, the COVID-19 pandemic, and the Station's tower crew. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind DMC that, pursuant to the Reimbursement Expansion Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs reasonably incurred as a result of the reorganization of broadcast television spectrum.⁶ Please note, however, that additional expenses

⁴ See LMS File No. 0000053054; *Special Displacement Window PN; Incentive Auction Task Force and Media Bureau Extend Post Incentive Auction Special Displacement Window Through June 1, 2018*, Public Notice, 33 FCC Rcd 3794 (IATF/MB 2018).

⁵ 47 CFR § 73.3598(b).

⁶ See *Consolidated Appropriations Act, 2018*, Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). See also 47 CFR § 73.3701 (Reimbursement Under the Reimbursement Expansion Act); *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 34 FCC Rcd 1690 (2019); and *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 7855 (2018).

incurred, such as those resulting from changes in a Station's plans to construct its displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

We further remind DMC that the deadline for submitting final expense documentation for reimbursement for eligible Stations is September 5, 2022.⁷ Thus, we strongly encourage the DMC to diligently pursue completion of the current deadlines to improve the likelihood that there will be sufficient funds available to reimburse the Station for its legitimate expenses, and we encourage DMC to submit eligible invoices as soon as practicable.

The above facts considered, the request for waiver of the tolling rules of Delta Media Corporation **IS GRANTED** and the expiration date of the construction permit (LMS File No. 000053054) for KXKW-LD, Lafayette, Louisiana, **IS TOLLED** to December 3, 2021. We note that another request for tolling or tolling waiver will not be favorably viewed unless accompanied by a showing and written support that completion of the Stations' permanent displacement facilities was prevented for an eligible tolling reason or additional rare and extraordinary circumstances outside of the Stations' control.⁸ DMC must also include with any such request a detailed plan for completing construction and returning the Stations to operation.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Kathleen Victory, Esq.

⁷ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB 2020) (setting three filing deadlines for the submission of all outstanding repack invoices, notably: 1) October 8, 2021 for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period; 2) March 22, 2022 for entities assigned completion dates in the second half of the transition period; and 3) September 5, 2022 for all other participants in the reimbursement program).

⁸ See 47 CFR § 73.3598(b); *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 42 (1999) (*Streamlining MO&O*) (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.").