



Federal Communications Commission  
Washington, D.C. 20554

February 10, 2022

Baraboo Broadcasting Corporation  
Kory Hartman  
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[Kory@WRPQ.COM](mailto:Kory@WRPQ.COM)  
(via electronic mail)

Re: Requests for Tolling Waivers  
W22FK-D, Baraboo, WI  
W25FT-D, Baraboo, WI  
W36FN-D, Baraboo, WI  
Fac ID Nos. 184166, 184167 and  
184168  
LMS File Nos. 0000178808,  
0000178812 and 0000178801

Dear Licensee,

This concerns requests for waiver of the Commission's tolling provisions and tolling of construction permit expiration dates (Requests) filed by the Baraboo Broadcasting Corporation (BBC), permittee of low power television (LPTV) stations W22FK-D, W25FT-D, and W36FN-D, all located in Baraboo, Wisconsin (collectively Stations). For the reasons below, we grant BBC's Requests and toll the expiration dates of the Stations' construction permits to July 11, 2022.<sup>1</sup>

*Background.* Requests for additional time to construct LPTV facilities 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

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<sup>1</sup> Because BBC requests tolling through Sunday, July 10, 2022, we will extend the construction permits to the next business day, which would be Monday, July 11, 2022. *See* 47 CFR § 1.4.

<sup>2</sup> *See* 47 CFR § 73.3598(b).

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

demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.<sup>4</sup>

*Requests For Tolling Waiver.* The Stations are unbuilt, new LPTV stations located in Baraboo, Wisconsin. The construction permits<sup>5</sup> were granted in February 2011 and had expiration dates of July 13, 2021.<sup>6</sup> The Stations’ construction permits were displaced by the Incentive Auction and repacking process and in July 2021 BBC was granted the Displacement CPs with new channels. BBC’s extension applications were granted on July 7, 2021 and the Displacement CPs expiration dates were extended to January 10, 2022.<sup>7</sup>

In its well-documented Requests, BBC states that, since the grant of its Displacement CPs in July 2021, it has been working to diligently complete construction of its new Stations, all of which will be co-located on the same tower. In October 2021, the tower owner informed BBC that its engineer had found significant corrosion issues with the tower resulting in a need for the guy anchors to be moved. The tower owner stated at the time that, due to the approaching winter weather in Wisconsin, it did not believe it could complete the necessary work until the Spring of 2022. With that notification, a copy of which is provided with its Requests, BBC immediately began identifying alternative tower sites. BBC states that it quickly identified a site within 10 miles of the currently authorized site and is close to completing a lease on the new tower site. These facts are supported by e-mail correspondence attached to the Requests between BBC and its new tower owner. As soon as a lease is secured, BBC pledges to file a minor modification application to specify the new tower location. BBC will then obtain the necessary equipment and complete construction of the Stations. Based on the foregoing, BBC requests that the Displacement CPs be tolled until July 2022.

*Discussion.* Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration dates of the Displacement CPs to July 11,

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<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) (*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).

<sup>5</sup> See BNPDTL-20100125ABB as modified by displacement LMS File No. 0000151596 (W22FK-D); BNPDTL-20100125ABC as modified by displacement LMS File No. 0000151594 (W25FT-D); BNPDTL-20100125AAZ as modified by displacement LMS File No. 0000151595 (W36FN-D) (Displacement CPs).

<sup>6</sup> See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14932-33, para. 9 (2015). In that decision, the Commission extended the expiration date of valid construction permits for new digital low power television stations to the LPTV digital transition date which is set as 12 months following the completion of the 39-month post-Incentive Auction transition period or 51 months from the completion of the Incentive Auction and the release of the *Closing and Channel Reassignment Public Notice*. *Id.* See *Incentive Auction Closing and Channel Reassignment Public Notice: The Broadcast Television Incentive Auction Closes; Reverse Auction and Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd 2786 (IATF and MB 2018) (*Closing and Channel Reassignment Public Notice*). Given the April 13, 2017 release date of the *Closing and Channel Reassignment Public Notice*, the LPTV digital transition date and expiration date of all valid construction permits for new digital LPTV stations were set as July 13, 2021.

<sup>7</sup> See LMS File Nos. 0000139065; 0000139062; and 0000139036.

2022.<sup>8</sup> BBC has demonstrated that it has been diligently making progress towards completion of the Stations, but was unable to complete construction due to issues with the structural integrity of its existing tower structure. BBC has worked diligently to identify a new tower site and plans to promptly complete construction. Ultimately, we conclude that the public interest will be served by grant of waivers and tolling of the Displacement CPs.

The above facts considered, Baraboo Broadcasting Corporation's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000151596; 0000151594; and 0000151595, respectively) for W22FK-D, W25FT-D and W36FN-D, all Baraboo, Wisconsin, **ARE TOLLED through July 11, 2022**. To the extent the Stations seek additional tolling, such requests must include a detailed plan for completing construction and a showing demonstrating that completion of the Stations' facilities was prevented for either an eligible tolling reason or rare and extraordinary circumstances outside of BBC's control.<sup>9</sup> We will look unfavorably upon any future request that does not include such information.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Paul Feldman, Esq.

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<sup>8</sup> 47 CFR § 73.3598(b).

<sup>9</sup> *See id.* A station may also seek a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" prevent construction. *See Streamlining MO&O*, 14 FCC Rcd at 17536, para. 42.