



Federal Communications Commission
Washington, D.C. 20554

January 25, 2023

Baraboo Broadcasting Corporation
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(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. 0000206620,
0000206623 and 0000206625

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 June 1, 2023.

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.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

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).

Requests For Tolling Waiver. The Stations are unbuilt, new LPTV stations located in Baraboo, Wisconsin. The construction permits⁴ were granted in February 2011 and were ultimately assigned expiration dates of July 13, 2021.⁵ The Stations' construction permits were displaced by the Incentive Auction and repacking process and in July 2021 BBC was subsequently granted displacement construction permits (Displacement CPs). Since grant of the Displacement CPs, the Stations have been granted construction permit extensions⁶ and have twice been granted waivers of the tolling rules, with the Displacement CPs most recently being tolled through January 10, 2023.⁷

In its well-documented Requests, BBC states that, since the grant of its last tolling waivers in October 2022, it has been working to diligently complete construction of its new Stations, all of which will be co-located on the same tower. BBC states that, on December 30, 2022, it completed the lease for the Stations' shared tower site and is now in the process of ordering equipment and preparing for construction of the Stations' shared facilities. However, BBC reports that heavy snow has made the tower site inaccessible since late November 2022. In addition, because the site is very remote and wooded, BBC notes that it needs some vegetation remediation in order to facilitate tower workers access to the site. After the vegetation is removed, BBC states that it will be able to schedule a tower crew and begin construction. BBC provides photographic evidence supporting its claims and a timeline for completing the remaining construction tasks. Based on the foregoing, BBC requests that the Displacement CPs be tolled to June 1, 2023.

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 June 1, 2023.⁸ 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 delays obtaining a tower site and tower site access issues due to snow and vegetation requiring remediation. BBC has worked to identify a new tower site and has successfully entered into a lease and is completing construction. Ultimately, we conclude that the public interest will be served by grant of waivers and tolling of the Displacement CPs.

⁴ 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).

⁵ 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.

⁶ See LMS File Nos. 0000139065; 0000139062; and 0000139036.

⁷ See LMS File Nos. 0000178808, 0000178812, and 0000178801, 0000194631, 0000194628 and 0000194633.

⁸ 47 CFR § 73.3598(b).

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 **June 1, 2023**. **While we anticipate this will be BBC's final request for tolling**, any additional request(s) for tolling under section 73.3598(b) of the Rules⁹ will not be favorably viewed unless accompanied by a showing that completion of the station's facilities was prevented by additional compelling circumstances. Such requests must include a detailed plan for completing construction, 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, and supporting documentation for all claims. We will look unfavorably upon any request that does not include such information.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

⁹ *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.