



Federal Communications Commission
Washington, D.C. 20554

November 6, 2019

Board of Governors of
Missouri State University
901 S. National Ave.
Springfield, MO 65897

Re: Request for Tolling Waiver
KOZK, Springfield, MO
Facility ID No. 51102
LMS File No. 0000085452

Dear Licensee,

On October 9, 2019, Board of Governors of Missouri State University, (MSU), the licensee of KOZK, Springfield, Missouri (KOZK or Station), filed the above-referenced request for waiver of the Commission's tolling provisions for the Station's construction permit expiration date. For the reasons below, we grant MSU's request and toll the expiration date of KOZK's construction permit through May 29, 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

MSU requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through May 27, 2020. KOZK is currently operating on its post-

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).

auction channel with temporary facilities.⁵ KOZK was previously granted a six-month extension and subsequently tolling of its construction permit until November 29, 2019.⁶ MSU states that, since the grant of its last tolling waiver request, the Station has completed long-term lease negotiations with its tower owner and the parties are moving swiftly towards installation of KOZK's permanent post-auction channel facilities. MSU now estimates that its post-auction facilities will be complete by late Fall 2019. Because of continued high-demand for tower crews and equipment manufacturers, MSU states that its installation schedule remains uncertain and out of an abundance of caution is seeking a waiver of the tolling rules and tolling of its construction permit deadline until May 29, 2020.

Discussion. Upon review of the facts and circumstances presented, we find that rare and exceptional circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station's construction permit for 180 days. Specifically, the collapse of the Station's tower during construction work caused it to have to modify its transition plan. MSU has worked diligently to restore service utilizing temporary facilities. We also find that grant of MSU's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KOZK has already ceased operation on its pre-auction channel and resumed operations on its post-auction channel. To the extent some viewers are unable to receive KOZK's signal while it operates using its interim facility, we believe that MSU 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 MSU 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, Board of Governors of Missouri State University's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000034615) for KOZK, Springfield, Missouri **IS TOLLED to May 29, 2020**. Grant of this tolling waiver does not permit KOZK to recommence operation on its pre-auction channel. We also remind

⁵ See LMS File No. 0000082044.

⁶ See LMS File No. 0000059628 and 0000068726.

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.").

MSU that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,

A handwritten signature in black ink, appearing to read 'B A Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Derek Teslik, Esq.

⁸ See 47 § CFR 73.3598(b).