



Federal Communications Commission
Washington, D.C. 20554

July 22, 2021

Michael Karr
4810 Browns Creek Road
St Albans, WV 25177
Michaelfkarr@gmail.com
(via electronic mail)

Re: Request for Tolling Waiver
WVUX-LD, Fairmont, WV
Facility ID No. 129306
LMS File No. 0000149786

Dear Licensee,

On June 28, 2021, Michael Karr, licensee of low power television station, WVUX-LD, Fairmont, West Virginia (WVUX-LD), filed the above-referenced, amended, 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 Karr's request and toll the expiration date of WVUX-LD's construction permit 180 days through December 13, 2021.¹

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.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

Request For Tolling Waiver. Karr requests waiver of the tolling rule and tolling of his construction permit (LMS File No. 000051588) for the station's digital displacement facilities (Displacement CP). As part of the Incentive Auction repacking process, WVUX-LD's channel 13 was

¹ Because 180 days from the Station's current construction permit expiration date falls on Sunday, December 12, 2021, we will extend the construction permit to the next business day, which would be Monday, December 13, 2021. See 47 CFR § 1.4.

² See 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).

displaced by WVFX-TV, Clarksburg, West Virginia, that was repacked to channel 13. WVUX-LD timely filed a displacement application requesting a construction permit for channel 10 and that application was granted on June 15, 2018.

Since the grant of the Displacement CP for channel 10, Karr states that he began over two years ago requesting authorization from the Station's existing tower owner to repair or even purchase the tower. By October 2019, Karr additionally began looking for another tower to lease. Karr inquired about leasing tower space from the local County on one of its emergency services towers. In April 2020, Karr states that he began specific lease term negotiations with the County. At the time, the COVID-19 pandemic was beginning and Karr states that County offices were shut down to the public. As a result, Karr states that negotiating a lease was a lengthy process with one in-person meeting and multiple telephonic discussions.

In April 2020, Karr states that he also ordered the necessary equipment for the Station's new channel 10 displacement facilities including a transmitter on April 15, 2020, and antenna with cables and necessary connectors and fixtures on April 23, 2020. Karr states that he has received delivery of the Station's equipment for its displacement facilities. From July 2020 through September 2020, Karr states that he continued lease negotiations with the County; however, such negotiations were delayed by the inability to meet with staff due to COVID-19 related shutdowns and the fact that the County person responsible for negotiates was in the process of retiring. Karr states that he was not able to have the tower lease presented before the County planning commission until September 2020. Karr states that at the time the planning commission seemed to indicate that it was willing to allow WVUX-LD to co-locate on a tower but delayed the vote and requested that its staff inquire of the tower manufacturer as to whether the tower could safely sustain WVUX-LD's over 300-pound antenna. At a subsequent video meeting, a representative from the County's emergency services recommended that the planning commission refuse the lease because WVUX-LD was not emergency-service related and that the planning commission reserve its tower space for governmental use and related emergency service purposes such as cellphone companies provide. As a result, Karr states that the planning commission voted to decline leasing tower space to WVUX-LD on September 9, 2020.

Following the lease denial, Karr states that he re-focused attention on repairing the Station's existing tower and a tower study was conducted in September 2020. On October 2, 2020, Karr received the results of the study showing that the tower was in such disrepair that it could not be repaired. Further, the tower owner declined permitting WVUX-LD to replace the tower or locate another tower on the property because he intended to redevelop the land for industrial and commercial purposes.

Karr states that he continued his efforts of locating tower space to lease in the area of its current population; however, these efforts were strained by COVID-19 lockdowns where businesses were not open to the public and the inability to contact landowners in person. Karr states that he and his representatives made multiple phone calls to tower owners and landowners to inquire about leasing a tower. It was not until January 2021 that Karr states that he made contact with a landowner who was willing to sell vacant land that was at a sufficiently high location. In February 2021, WVUX-LD consulted with a tower construction company to obtain a quote for constructing a tower at the new potential site. In March 2021, the tower construction company facilitated an aeronautical study of the new potential site for WVUX-LD and engineers conducted a physical site inspection on March 25, 2021 and rendered their results in April 2021. The FAA reviewed and conducted its own studies in order to render preliminary approval for WVUX's new construction on May 12, 2021. The tower construction

company then submitted a quote to Karr dated May 29, 2021, for the new tower build.⁵ Karr states that its tower was due to be delivered June 8, 2021, however the delivery was delayed because not all parts of the tower had yet been manufactured.

Karr has supplied multiple pages of documentation supporting all of the statements in his Request. Karr requests that, because of extraordinary times caused by the COVID-19 pandemic, the act of a local government declining tower colocation to WVUX-LD, the delays in obtaining quotes from tower manufacturers because of the fluctuating prices and low supply of steel, and the legal delays related obtaining administrative approval by FAA and other necessary government entities, all support grant of the Request, waiver of the tolling rules, and tolling of the Displacement CP.

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 Displacement CP to December 13, 2021.⁶ Karr has demonstrated he has been diligently making progress towards completion of the Station's displacement facilities but was unable to complete construction due to construction delays outside of his control including the loss of the Station's tower site, refusal of the local County authorities allow use of County tower facilities, and demonstrated direct construction and equipment delays resulting from the COVID-19 pandemic. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit. Although Karr requests tolling through June 14, 2022, we find based on the information provided that tolling through December 13, 2021, is sufficient and will ensure that Karr continues to take steps to complete construction in a diligent manner.

We remind Karr 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.⁷ Please note, however, that additional expenses incurred, such as those resulting from changes in a Station's plans to construct their displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

We further remind Karr that the deadline for submitting final expense documentation for reimbursement for the Station is September 5, 2022.⁸ Thus, we strongly encourage the Station to diligently pursue completion of the current deadlines to improve the likelihood that there will be sufficient funds

⁵ Karr notes that tower company was also delayed in providing the quote as the result of COVID-19 "fallouts." Specifically, Karr cites shortages of steel and manpower due to COVID-19 shutdowns and slowdowns. Karr states that its tower construction company ordered the new tower in January 2021.

⁶ 47 CFR § 73.3598(b).

⁷ 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).

⁸ 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).

available to reimburse Karr for its legitimate expenses, and we encourage Karr to submit eligible invoices as soon as practicable.

The above facts considered, Michael Karr's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000051588) for WVUX-LD, Fairmont, West Virginia, **IS TOLLED through December 13, 2021**. We remind Karr that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁹ To the extent the Station seeks an additional extension of tolling, such a request must include what actions have been taken since tolling was granted and a detailed plan for completing construction of the Station's facilities. We will look unfavorably upon any future request that does not include such a plan.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Jennifer Scragg Karr, Esq.

⁹ *Id.*