



Federal Communications Commission
Washington, D.C. 20554

February 17, 2022

Gray Television Licensee, LLC
4370 Peachtree Road, NE
Atlanta, GA 30319
robert.folliard@gray.tv
(via electronic mail)

Re: Requests for Tolling Waivers
K18NW-D, Minot, ND
K35PO-D, Bismarck, ND
Facility ID Nos. 186094 and 187460
LMS File No. 0000178418 and
0000178419

Dear Licensee,

This concerns requests for waiver of the Commission's tolling provisions and tolling of construction permit expiration date (Requests), as amended, filed by the Gray Television Licensee, LLC (Gray), permittee of low power television (LPTV) stations K18NW-D, Minot, North Dakota (K18NW-D) and K35PO-D, Bismarck, North Dakota (K35PO-D) (collectively Stations). For the reasons below, we grant Gray's Requests and toll the expiration date of the Stations' construction permits to July 11, 2022.¹

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.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

¹ Because Gray request 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.

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) (*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. The construction permits⁵ for channel 38 (K18NW-D) and channel 45 (K35PO-D) were originally issued to Landover 2, LLC (Landover) in 2012 and had expiration dates of July 13, 2021.⁶ The Stations' channels were displaced by the Incentive Auction and repacking and Landover filed displacement applications for channel 18 (K18NW-D) and channel 35 (K35PO-D) (Displacement CPs).⁷ Extension applications were filed by Landover and granted on August 26, 2021, and the Displacement CPs were extended to January 10, 2022.⁸ Gray subsequently acquired the Stations from Landover on September 22, 2021.⁹

In Landover's Extension Applications, Gray provided a statement as buyer of unbuilt construction permits that included a timeline for completing construction of the Stations. Gray stated that it intended to complete construction of the Stations "as soon as reasonably possible and in all events before January 10, 2022." In its Requests, Gray provides well-documented showings of its efforts to complete construction of the Displacement CPs and of the delays outside of its control that it encountered preventing construction by January 10, 2022.

Gray states that it began planning the buildout of the Station in July 2021, as soon as the application for assignment to Gray was filed. Gray is coordinating the construction of both Stations because Gray states that it can be difficult to get tower installation crews to these sites. Gray states that, once structural analyses of the Stations' proposed tower sites were completed, it immediately placed orders for the Stations' antennas, transmitters, and transmission lines. The Stations' transmitters were originally scheduled to arrive on November 19, 2021, which Gray believed would have allowed sufficient time to complete construction before the January 10, 2022 deadline. However, as documented in correspondence from the manufacturer, its transmitter manufacturer subsequently informed Gray that it was suffering severe supply chain interruptions for a critical component and significant shipping delays. As a result, the transmitter for K18NW-D was only just delivered in early February 2022 and the transmitter for K35PO-D is now expected to be shipped February 24, 2022.

Although the transmitter and all other equipment for K18NW-D are now on-site, and the transmitter for K35PO-D is expected to be delivered shortly, Gray states that the Stations' tower installation company recently informed Gray that it will be unable to schedule installations at this time because of severe weather in the region around the Stations' tower sites. Gray provides a letter from the installation company stating that it is tentatively scheduled to resume installations in early April 2022, dependent upon weather.

⁵ See CDBS File Nos. BNPDTL-20100609AGO (K18NW-D) and BNPDTL-20100505AMF (K35PO-D).

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.

⁷ See LMS File Nos. 0000157641 and 0000157642.

⁸ See LMS File Nos. 0000135791 and 0000136076 (Extension Applications).

⁹ See LMS File Nos. 0000152339 and 0000152343.

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 Stations' Displacement CPs to July 11, 2022.¹⁰ Gray has demonstrated, since acquiring the Stations in September 2021, it has been diligently making progress towards completion of the Stations' facilities, but was unable to complete construction due to construction delays outside of its control, including supply chain delays obtaining the Stations' transmitter, and weather delays impacting the scheduling of its tower installation crew. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Stations' Displacement CPs.

The above facts considered, Gray Television Licensee, LLC's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000157641 and 0000157642, respectively) for K18NW-D, Minot, North Dakota and K35PO-D, Bismarck, North Dakota, **ARE TOLLED through July 11, 2022**. To the extent the Station seeks additional tolling for either station, such a request must include a detailed plan for completing construction and a showing demonstrating that completion of the Station's facilities was prevented for either an eligible tolling reason or rare and extraordinary circumstances outside of Gray's control.¹¹ 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): Joan Stewart, Esq.

¹⁰ 47 CFR § 73.3598(b).

¹¹ *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.