



Federal Communications Commission
Washington, D.C. 20554

July 15, 2022

State of Alaska
Dave Donley
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Anchorage, AK 99501
dave.donley@alaska.gov
(via electronic mail)

Re: Requests for Tolling Waivers

Dear Licensee,

This concerns requests for waiver of the Commission's tolling provisions and tolling of construction permit expiration dates (Requests) filed by the State of Alaska (SOA), licensee of the fifteen low power television stations listed in the attached Appendix (Stations).¹ For the reasons below, we grant SOA's Requests and toll the expiration date of the Stations' construction permits to October 3, 2022.²

Background. Requests for additional time to construct low power television facilities are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.³ 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.⁴ 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.⁵ The Stations that are the subject of this decision do not have completed digital facilities and are operating in analog pursuant to a waiver from the Commission that

¹ A list of the stations covered by this action and the LMS file numbers of the Requests and digital construction permits are contained in the Appendix to this letter.

² Because the extended date requested by SOA falls on Saturday, October 1, 2022, we will extend the construction permits to the next business day, which would be Monday, October 3, 2022. See 47 CFR § 1.4.

³ See 47 CFR § 73.3598(b).

⁴ *Id.*

⁵ 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).

permitted their continued analog operations.⁶ On January 26, 2022, the Video Division granted SOA's requests for waiver of the tolling rules and tolled the Station's digital construction permits to July 11, 2022.⁷

Requests For Tolling Waiver. The Stations are a part of a network of translator stations that SOA operates in rural and bush Alaska Native communities otherwise known as the Alaska Rural Communications System (ARCS). SOA states that ARCS sites provide free, over-the-air television and radio programming, including the emergency alert system (EAS), across much of rural Alaska via a satellite link at the University of Alaska – Fairbanks. The Stations are often times the only over-the-air television service for the communities they serve and provide a vital link to the outside world for their viewers providing important news, public affairs, emergency alerts, and weather information.

SOA states that, since the last grant of tolling in January 2022, it has made substantial progress to complete construction of these seven Stations, including having the necessary equipment on hand, but it needs additional time to complete construction. SOA cites to the fact that most of these communities are not connected to Alaska's very limited road system and most of these communities consist of fewer than 300 residents. These facts are exacerbated by Alaska's climate and short construction period, which generally only lasts for about 12 weeks from June through August. Taken together, these circumstances make construction of the Stations' digital facilities very challenging.

Accordingly, SOA requests waiver of the tolling rules and tolling of the Stations' digital construction permits in order to allow additional time for it complete construction and for the Stations to begin operating in digital for the first time, providing their viewers with the benefits of digital television. SOA states that it has completed construction of the digital facilities for several of its analog translators and is confident it can complete construction of these remaining Stations' digital facilities by the extended date.

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 SOA's digital construction permits to October 3, 2022.⁸ SOA has demonstrated it has been diligently making progress towards completion of the Stations' digital facilities but was unable to complete construction due to rare and extraordinary construction delays including the unique nature of the location of the Stations' transmitter sites in rural and bush Alaska communities. The Commission and Video Division have previously recognized such unique circumstances when each granted waivers of the analog termination deadline and the Video Division granted waiver of the tolling rules.⁹ We find that the circumstances presented support the grant

⁶ See *State of Alaska - Request for Waiver of Section 74.731(m) of the Commission's Rules*, FCC 21-78 (rel. June 21, 2021) (*State of Alaska Waiver*). Of the 15 stations permitted to continue to operate in analog, eight have completed digital construction. SOA has requested an extension of its analog waivers for the remaining seven Stations that are the subject of this decision. Those extension requests are being simultaneously granted on staff action, with an expiration date of October 3, 2022. In its Requests, SOA states that it will not seek an additional waiver to permit the Stations to operate in analog beyond October 3, 2022. Should it's plans change, we remind SOA that is required to file for a further extension of authority for those stations to continue to operate in analog if those stations have not completed construction by October 3, 2022.

⁷ See Letter to State of Alaska from Barbara A. Kreisman, Chief, Video Division (Jan. 26, 2022) (*Division Letter*), a copy of which is available at LMS File Nos. 0000179529, 0000179531, 0000179528, 0000179535, 0000179536, 0000179527, 0000179526, 0000179534, and 0000179533.

⁸ 47 CFR § 73.3598(b).

⁹ See *State of Alaska Waiver Order*, at para.11; *Division Letter*, *supra* note 7; see also *supra* note 6 (noting staff action on extension of the Stations' waivers to continue to operate in analog).

of SOA's Requests and to waive the tolling rules and toll the Stations' digital construction permits. Ultimately, we conclude that the public interest will be served by grant of the waiver and tolling in this case.

The above facts considered, the requests filed by the State of Alaska and listed in the Appendix **ARE GRANTED** and the expiration dates of the construction permits listed in the Appendix **ARE TOLLED** to October 3, 2022. To the extent the Station seeks additional tolling, such a request must include actions taken to complete construction, a detailed plan for completing construction, and a showing demonstrating that completion of the Station's permanent post-auction facility was prevented for either an eligible tolling reason or rare and extraordinary circumstances outside of SOA's control.¹⁰ 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): Margaret Miller, Esq.

¹⁰ 47 CFR § 73.3598(b). 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.

APPENDIX

Call Letters	FAC ID	City	ST	Tolling Waiver File No.	Construction Permit File No.
K03GL	62580	KING MOUNTAIN, ETC.	AK	194718	BDFCDVL-20141120AEX
K04KV	62760	UNALASKA	AK	194713	BDFCDVL-20141229AGV
K04LE	62668	STEBBINS	AK	194714	BDFCDVL-20141229ADC
K04LJ	62542	ATKA	AK	194717	BDFCDVL-20141024ADE
K11SD	62541	EEK	AK	194716	BDFCDVL-20141113AGA
K13SA	62850	PORT HEIDEN	AK	194712	BDFCDVL-20141230AAQ
K13SV	62563	PEDRO BAY	AK	194715	BDFCDVL-20141222ABJ