



Federal Communications Commission  
Washington, D.C. 20554

July 21, 2022

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. 0000194631,  
0000194628, 0000194633

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 October 10, 2022.

*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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> See 47 CFR § 73.3598(b).

<sup>2</sup> *Id.*

<sup>3</sup> 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 permits<sup>4</sup> were granted in February 2011 and had expiration dates of July 13, 2021.<sup>5</sup> The Stations' construction permits were displaced by the Incentive Auction and repacking process and in July 2021 BBC was granted the Displacement CPs with new channels. BBC's extension applications were granted on July 7, 2021 and the Displacement CPs expiration dates were extended to January 10, 2022.<sup>6</sup> On February 10, 2022, BBC was granted waivers of the tolling rules and the Displacement CPs expiration dates were tolled to July 11, 2022.<sup>7</sup>

In its well-documented Requests, BBC states that, since the grant of its tolling waivers in February 2022, it has been working to diligently complete construction of its new Stations, all of which will be co-located on the same tower. Since February 2022 BBC states that it has been closely working with its antenna manufacturers, consulting engineer, and tower owner to complete construction of the Station's facilities. Also in February 2022, BBC began working with the owner of the Mobilitie Wilton Tower (MW Tower) to try to "fast track" approvals and construction on the tower. However, that same month, MW tower owner informed BBC that construction will take at a minimum 5 months to be completed. Specifically, the MW tower owner stated that a full tower study, including wind study and "intermod study" would need to be completed as well as "signed and sealed site drawings" from a professional or Civil Engineer - before a lease agreement could be signed. In addition, the MW tower owner stated that BBC would need to obtain a building permit or "no permit letter" from the local jurisdiction for installation; and a ground lease from the MW tower owner's corporate parent. Finally, BBC was informed that it would be required to supply its own power facilities, even though there was power already available at this working tower site. These facts are supported by e-mail correspondence attached to the Requests between BBC and the MW tower owner. During this time period BBC also undertook efforts to order equipment and take steps to obtain a tower installation crew to conduct installations.

In May 2022, BBC determined that in light of the time requirements set forth by the MW Tower owner, it would not be possible to complete construction in a reasonable period of time. On May 4, 2022, BBC confirmed the location of a Mediacom tower and began negotiating to locate the Stations' facilities there. As supported through copies of correspondence between BBC and Mediacom included with its Requests, throughout the rest of May and June 2022 BBC had several contacts with the

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<sup>4</sup> 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).

<sup>5</sup> 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.

<sup>6</sup> See LMS File Nos. 0000139065; 0000139062; and 0000139036.

<sup>7</sup> See LMS File Nos. 0000178808, 0000178812, and 0000178801.

Mediacom tower owner to work out the details on locating the Stations. At the end of June 2022, BBC began drafting a lease for this location and has continued these discussions to date. BBC states that it is confident that a lease will be secured shortly.

Following grant of the instant tolling waivers, BBC pledges to finish the lease process, and file minor modification applications to specify the Mediacom tower location for the Stations. BBC will then finish obtaining the necessary equipment and complete construction of the Stations. Based on the foregoing, BBC requests that the Displacement CPs be tolled for an additional 180 days.

*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 October 10, 2022.<sup>8</sup> 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 for the Stations. BBC has worked to identify a new tower site and plans to promptly enter into a lease and complete construction. Ultimately, we conclude that the public interest will be served by grant of waivers and tolling of the Displacement CPs. However, in order to ensure diligent progress continues we find it is appropriate to extend the Station's Displacement CPs through October 10, 2022.

While we understand that additional time may be needed, we hope this will be a sufficient amount of time for BBC to complete its tower lease and set forth a specific timeline for completing construction of the Stations. To the extent the Stations seek additional tolling, such requests must include a detailed plan for completing construction and 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.<sup>9</sup> We will look unfavorably upon any future request that does not include such information. We also caution BBC that a decision to again change tower locations could be viewed as an independent business decision and may not constitute "rare and exceptional circumstances" that warrant further tolling.

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 **October 10, 2022**.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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

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<sup>8</sup> 47 CFR § 73.3598(b).

<sup>9</sup> *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.