



Federal Communications Commission
Washington, D.C. 20554

October 17, 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. 0000202137,
0000202132 and 0000202139

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 January 10, 2023.

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.¹ 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.² 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.³

¹ See 47 CFR § 73.3598(b).

² *Id.*

³ 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 permits⁴ were granted in February 2011 and had expiration dates of July 13, 2021.⁵ 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, 2022.⁶ BBC was twice granted waivers of the tolling rules and the Displacement CPs expiration dates were most recently tolled to October 10, 2022.⁷

In its well-documented Requests, BBC states that, since the grant of its last tolling waivers in July 2022, it has been working to diligently complete construction of its new Stations, all of which will be co-located on the same tower.⁸ In July and August 2022 BBC states that it continued to negotiate a lease with the owner of the proposed Stations' tower. BBC was finally able to obtain a draft lease agreement in early September 2022 and spent the next month working out the final details with the tower owner. In early October 2022, BBC returned what it hopes will be the final draft of the lease to the owner. Meanwhile, BBC has also re-engaged with its engineering consultant and been actively working to finalize its plans for ordering and receiving delivery of the Stations' equipment.

BBC states that it is confident that the lease will be signed by mid-October 2022. Following execution of the lease, BBC pledges to file minor modification applications to specify the new tower location for the Stations and believes it could complete construction in as quickly as sixty days after grant. However, BBC notes that that if there is any significant delay in finalizing its lease or receiving delivery of its equipment, then adverse winter weather in Wisconsin could prevent construction from being completed until April 2023. Based on the foregoing, BBC requests that the Displacement CPs be tolled to April 10, 2023.

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 January 10, 2023.⁹ BBC has demonstrated that it has been diligently making progress towards completion of the

⁴ 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).

⁵ 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.

⁶ See LMS File Nos. 0000139065; 0000139062; and 0000139036.

⁷ See LMS File Nos. 0000178808, 0000178812, and 0000178801, 0000194631, 0000194628 and 0000194633.

⁸ BBC originally filed for tolling because of the sudden loss of the tower site specified in its Displacement CPs due to the tower owner's discovery of corrosion issues with the tower.

⁹ 47 CFR § 73.3598(b).

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 will be entering into a lease shortly and completing construction. Ultimately, we conclude that the public interest will be served by grant of waivers and tolling of the Displacement CPs. However, while BBC seeks tolling through April 10, 2023, in order to ensure diligent progress continues we find it is appropriate to extend the Station's Displacement CPs through January 10, 2023.

While we understand that additional time could be needed, especially if construction is delayed until winter, we expect that, at minimum, tolling of the Stations' construction permits through January 10, 2023, will provide BBC time to complete its tower lease, make all necessary equipment orders, and establish 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.¹⁰ 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 **January 10, 2023**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹⁰ *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.