



Federal Communications Commission
Washington, D.C. 20554

January 26, 2022

State of Alaska
Dave Donley
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(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 180 days to July 11, 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

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 180 days from the Stations' current construction permit expiration dates falls on Saturday, July 9, 2022, we will extend the construction permits to the next business day, which would be Monday, July 11, 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).

completed digital facilities⁶ and are either silent or are operating in analog pursuant to a waiver from the Commission that permitted their continued analog operations.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 it has the capital appropriations from the State of Alaska to complete construction of these facilities and it has made substantial progress, 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.

SOA also states that, after more than thirty years of service, many of the Stations, particularly those located at remote sites, have equipment that has become degraded by long exposure to extreme conditions and vandalism. Further, many sites no longer have local support for housing, power, and operational maintenance. SOA maintains that many sites require more than just a new digital transmitter to replace the old analog transmitter, they will require additional infrastructure repairs and new operational support.

Accordingly, SOA requests waiver of the tolling rules and tolling of the Stations’ digital construction permits for 180 days 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.

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 July 11, 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 previously recognized such unique circumstances when it granted waivers of the analog termination deadline and allowed certain of SOA’s stations to continue to

⁶ The Stations were each granted an extension of digital construction permit in 2021 and the digital construction permits were extended to January 10, 2021.

⁷ See *State of Alaska - Request for Waiver of Section 74.731(m) of the Commission's Rules*, FCC 21-87 (78 (rel. June 21, 2021) (*State of Alaska Waiver*). Of the 15 stations permitted to continue to operate in analog, six have completed digital construction. SOA has requested for an extension of its analog waivers for the remaining nine stations – those listed in the Appendix with an asterisks (*). Those extension requests are being simultaneously granted on staff action, with an expiration date of July 11, 2022. 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 July 11, 2022.

⁸ 47 CFR § 73.3598(b).

operate in analog mode after the July 13, 2021 analog termination deadline.⁹ We find that the circumstances presented support the grant 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 July 11, 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.

⁹ See *State of Alaska Waiver Order*, at para.11. See *supra* note 7 (noting staff action on extension of certain stations waivers to continue to operate in analog).

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.
K13TO	62511	NEW STUYAHOK	AK	0000180031	BDFCDVL-20141217ACS
K09SK	62572	EGEGIK	AK	0000180033	BDFCDVL-20141113AGD
K09RS	62577	ANAKTUVUK PASS	AK	0000180030	BDFCDVL-20141023ABC
K13TK	62749	MINTO	AK	0000180028	BDFCDVL-20141217AAQ
K09UE	62770	KASIGLUK	AK	0000180032	BDFCDVL-20141119ABV
K09NF	70202	CHITINA	AK	0000180029	BDFCDVL-20141105ADC
K07ST*	62525	WOMENS BAY	AK	0000179529	BDFCDVL-20141015ADG
K11SD*	62541	EEK	AK	0000179531	BDFCDVL-20141113AGA
K04LJ*	62542	ATKA	AK	0000179528	BDFCDVL-20141024ADE
K13SV*	62563	PEDRO BAY	AK	0000179535	BDFCDVL-20141222ABJ
K03GL*	62580	KING MOUNTAIN, ETC.	AK	0000179536	BDFCDVL-20141120AEX
K04LE*	62668	STEBBINS	AK	0000179527	BDFCDVL-20141229ADC
K04KV*	62760	UNALASKA	AK	0000179526	BDFCDVL-20141229AGV
K13SM*	62849	SLANA	AK	0000179534	BDFCDVL-20141229ADA
K13SA*	62850	PORT HEIDEN	AK	0000179533	BDFCDVL-20141230AAQ