



Federal Communications Commission
Washington, D.C. 20554

April 12, 2022

SENT CERTIFIED MAIL AND ELECRONIC MAIL

KM Communications, Inc.
3654 West Jarvis Avenue
Skokie, IL 60076
lee@kbcchicago.com

Re: Requests for Tolling Waivers

Dear Permittee,

This concerns requests for waiver of the Commission's tolling provisions and tolling of construction permit expiration dates (Requests), as amended, filed by KM Communications, Inc. (KM), permittee of six low power television (LPTV) stations.¹ For the reasons below, we deny KM's Requests and the Stations' construction permits are forfeited.

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 A list of the stations covered by this action (referred to herein collectively as "Stations") and the LMS file numbers of the Requests and digital construction permits are contained in the Appendix to this letter.

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 original construction permits (Station CPs) were issued with expiration dates of July 13, 2021.⁵ KM was granted extensions of the Station CPs in July 2021 and the Station CPs were extended to January 10, 2022.

In its identical Requests, filed January 10, 2022, KM simply stated its reason for seeking a tolling waiver: “Other: Supply chain issue – specifically, manufacturers unable to timely deliver.” KM amended its Requests the next day on January 11, 2022, and supplied an undated statement from the President of PME Public Media Engineering (PME), Peter Femal (Femal). Femal states that PME has been retained by KM “to perform construction services.” Femal maintains that he has been “advised by the broadcast equipment manufacturers that the delay in delivery of materials to construct the facility are due in part to global supply chain shortages and OEM manufacturer delays that do not allow transmitter construction in a timely manner.” Femal continues that when KM’s equipment and materials were ordered in June 2021⁶ “that should have typically allowed enough time for delivery and construction.” Femal predicts that the equipment will be delivered “in 60 days time.”

On January 28, 2022, the Video Division sent KM a letter stating that it was “unable to process the Requests without additional information.”⁷ KM responded on April 7, 2022, with largely-identical amendments wherein it attempted to supply additional support for its Requests. KM supplies a further statement from Femal who states that delays in completing construction of the Stations’ facilities was due to equipment having not been delivered. Femal states that this is due to “manufacturing backlogs and its symptomatic of equipment availability in general.” KM provided no specific documentation to support

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 Femal actually states that the equipment and material was ordered in “June 2020,” however, this appears to be a typo. The invoice included with his statement shows that equipment was ordered in June 2021.

⁷ See Letter to KM Communications, Inc. from Barbara A. Kreisman, Chief, Video Division (Jan. 28, 2022) a copy of which is available at LMS File Nos. 0000179542, 0000179544, 0000179547, 0000179543, 0000179545 and 0000179546. The Video Division requested that KM provide the following information for each station within 30 days: (1) a detailed accounting of all steps taken to complete construction since the grant of the extension of construction permit including dates for each action and supporting documentation; (2) a detailed accounting of any and all circumstances outside of your control that prevented construction since the grant of the extension of construction permit including dates of each circumstance and supporting documentation. Please describe how such circumstance(s) directly impacted construction; and (3) a detailed accounting of what construction remains and a timeline plan of how and when you expect to complete construction and begin operations.

this statement other than a cite to an internet article about supply chain delays.⁸ KM asks that the Commission take “official notice” of these delays. Femal stated further that he had identified tower crews but “could not finalize a date for the tower crew to install equipment until the equipment is on-hand or I have a firm delivery date.” As for KM’s three Texas stations, KM states that it is working on obtaining tower sites for these stations. Again, KM offered no documentation to support these statements or why its equipment deliveries and tower site negotiations were delayed. Instead of providing a “detailed accounting of what construction remains and a timeline plan of how and when you expect to complete construction and begin operations,” as requested by the staff, Femal simply states that he believed the Stations could be constructed “by October 1, 2022.”

Discussion. Upon review of the facts and circumstances presented, we find that KM has not demonstrated that rare and extraordinary circumstances exist to waive the rules and toll the expiration date of its construction permits for new low power television stations.⁹ KM is unable to demonstrate why it was unable to complete construction by the extended January 10, 2022 construction deadline. KM cites generally to “global supply chain shortages,” but does not specifically show how such delays affected construction of the Stations and does not offer any supporting documentation to support the alleged delays. For example, KM could have provided a copy of the Hawaii stations tower lease, correspondence from the equipment manufacturers noting the shipping delays and the reason that, but for the supply chain issues, they would have met the deadline. Furthermore, neither Femal’s original statement nor his amended version are specific as to the timeframe for when delays were experienced or how they directly affected impacted construction. KM does not sufficiently explain what delays occurred since the grant of its extension applications in July 2021 that prevented the completion of the Stations’ construction or provide sufficient support for its claims. KM also does not provide a timeline for when it expects to be able to complete construction instead estimating that construction of the Stations can be completed in “October 1, 2022.”

When evaluating requests for waiver of the tolling rule we conduct such a review on a case by case basis, which requires an analysis of the unique facts and circumstances of each case. As such we decline to take general “official notice” of the supply chain issues as requested by KM. Despite being offered an opportunity to supplement its Requests to supply this information, KM did not provide any additional further proof or documentation for its claims or how the supply chain issues directly impacted its specific construction project. Accordingly, given the facts before us, we can only conclude that KM’s failure to complete construction was based on its own inaction and poor planning, not due to rare and extraordinary circumstances outside of its control.

⁸ See Alejandro Gonzalez, *Broadcast and Live Events Sector Faces a Two Year Recover from Supply Chain Delays* (Feb. 14, 2022), <https://www.leasinglife.com/analysis/broadcast-and-live-events-sector-faces-a-two-year-recovery-from-supply-chain-delays/>.

⁹ 47 CFR § 73.3598(b).

The above facts considered, the requests for waiver of the tolling rules filed by KM Communications, Inc. and listed in the Appendix **ARE DENIED**. Furthermore, pursuant to 47 CFR § 74.488(b) the construction permits listed in the Appendix **ARE FORFEITED** and the facilities' call signs have been **DELETED**. All authority to construct the Stations has been **TERMINATED**.

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Aaron Shainis, Esq.

APPENDIX

Call Letters	Facility ID	City	ST	Tolling Waiver File No.	Construction Permit File No.
K07ZN-D	131039	LUBBOCK	TX	0000179542	BMJADVL-20100524ABA
K17OH-D	127166	SAN ANGELO	TX	0000179544	BMJADTL-20100524ABE
K30MK-D	129635	HILO	HI	0000179547	BMJADTL-20100520ACG
NEW	131035	MIDLAND/ODESSA	TX	0000179543	BMJADVL-20100524AAZ
W34EM-D	187393	LEE	IL	0000179545	BNPDTL-20100524AFR
WDXN-LD	182668	DIXON	IL	0000179546	BNPDVL-20090825BOQ