



Federal Communications Commission
Washington, D.C. 20554

January 7, 2015

Marnie K. Sarver, Esq.
Wiley Rein, LLP
1776 K Street, N.W.
Washington, DC 20006

Re: KETD(TV), Castle Rock, CO
File No. BPCDT-20120314ADO
Request for Tolling
Facility ID: 37101

Dear Counsel:

This concerns your December 31, 2014 letter, filed on behalf of KRCA License, LLC, (KRCA) requesting that the expiration date for the above-referenced digital construction permit for KETD(TV), Castle Rock, Colorado (station) be tolled. For the reasons set forth below, we grant your request and toll the expiration date of the station's digital construction permit.

The subject digital construction permit expires on March 22, 2015. You state that the subject construction permit involves the station relocating its antenna from its current location on Mount Morrison in Jefferson County, Colorado, to a new location on an existing tower currently occupied by an FM station which is planning to move to a new tower that is under construction. The FM station's move has been delayed due to unexpected equipment manufacturing delays, difficulty accessing the tower location with heavy equipment, and winter weather that limits construction on the mountain to no more than five months per year. You state that the FM station expects to be able to complete its relocation to its new tower by fall 2015. You maintain that the facts in this case present a "rare and exceptional circumstance" and that waiver of the construction permit deadline is appropriate. You request a six-month extension of the construction permit to September 22, 2015.

On June 13, 2009, the Commission began applying the tolling provisions of Section 73.3598 of the rules to DTV construction deadlines occurring after June 12, 2009.¹ Section 73.3598(b) of the rules provides 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 is delayed by any cause of action pending before any 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 The station does not qualify for tolling under any of those circumstances. We find, however, that good cause exists to waive Section 73.3598 and to toll the expiration of the station's DTV construction permit. The circumstances in this case are sufficiently unique to permit waiver of the rule. The station was unable to complete the relocation of its antenna due to the FM station's antenna site due to delays in the construction of the FM station's new tower. Construction of the new tower was delayed due to equipment delays, difficulty accessing the tower site and winter weather limiting the construction season at the tower location – all circumstances outside of the station's control. In addition, we find the

¹ See *Implementation of DTV Delay Act*, MB Docket No. 09-17, Second Report and Order and Notice of Proposed Rulemaking, 24 FCC Rcd 2526, 2540-41 (2009).

² See 47 C.F.R. § 73.3598(b).

public interest would be served by grant of a waiver and extension of the station's construction permit.³

The above facts considered, KRCA's tolling request IS GRANTED and the construction deadline for construction permit BPCDT-20120314ADO for KETD(TV), Castle Rock, Colorado, IS TOLLED until September 22, 2015. Any further requests for tolling must be submitted not later than June 22, 2015.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. A. Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman, Chief
Video Division
Media Bureau

³ We note that the Commission released a Report and Order adopting rules for the future incentive auction. *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 (2014) (*Incentive Auction Report and Order*). In conjunction with the incentive auction, the Commission will undertake a reorganization or "repack" of the broadcast television bands in order to free up a portion of the ultra high frequency (UHF) band for new flexible uses. *Id.* In the *Incentive Auction Report and Order*, the Commission stated that, in order to obtain protection during repacking, a station such as KETD(TV), with an unbuilt construction permit, must complete construction and submit a license application by the to-be-announced "Pre-Auction Licensing Deadline." *Id.* at paras. 195 and 207. We stress that our grant of tolling in this case does not affect the station's rights or responsibilities as described in the *Incentive Auction Report and Order* with respect to the protection the modified facility would receive during repacking, including the requirement that the station complete construction and submit a license application for its facility by the Pre-Auction Licensing Deadline in order to obtain protection during repacking.