

August 22, 2013

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Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

ACCEPTED/FILED

AUG 22 2013

Federal Communications Commission  
Office of the Secretary

RE: Station KIMX(FM)  
Nunn, Colorado  
FIN: 82007  
File No. BPH-20070822AAL

Dear Ms. Dortch:

This is written on behalf of Appaloosa Broadcasting Company, Inc. ("ABC"), the licensee of Station KIMX(FM), Nunn, Colorado, and in connection with the tolling of the term of the above-referenced construction permit.

The Audio Division has previously granted ABC a waiver of the construction period, contained in Section 73.3598(a) of the Commission's Rules, for KIMX's above-referenced construction permit. It has provided that until there is action on a pending Petition for Reconsideration, that ABC file status reports to request that the waiver treatment be extended.

ABC requests that this submission be considered a required status report and a request for the waiver treatment to be extended for a further interval of six months or until KIMX is in a position to construct its modified facilities, without restrictions, whichever is sooner.

The current basis for tolling is that there was a Petition for Reconsideration of the grant of ABC's construction permit for KIMX. On May 3, 2012, however, the Media Bureau denied the Petition for Reconsideration in *Letter to Christian Media Incorporated*, Ref. No. 1800B3-TSN, released May 3, 2012 ("Reconsideration Letter"). ABC informed Ms. Irene Bleiweiss of the Reconsideration Letter, on June 19, 2012, after the Reconsideration Letter had become a final and non-reviewable action of the Commission.

In its June 19, 2012 communication, ABC also pointed out the language of Special Operating Condition No. 4 to the KIMX permit. Special Operating Condition No. 4 provides as follows:

PROGRAM TESTS PURSUANT TO THIS CONSTRUCTION PERMIT WILL NOT COMMENCE UNTIL KCMF(FM), TERRYTOWN, NE, FACILITY 11069, COMMENCES PROGRAM TESTS ON CHANNEL 246C1. A LICENSE TO COVER THIS

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CONSTRUCTION PERMIT WILL NOT BE GRANTED UNTIL KCMI(FM), TERRYTOWN, NE, FACILITY 11069 IS GRANTED ALICENSE TO COVER FOR CHANNEL 246C1.

ABC submits that while the terms of Section 73.3598(b) do not specifically apply to the facts of this case, it should receive tolling relief, by waiver, based on the totality of the circumstances and actions of the Media Bureau in other instances of a similar nature. Pursuant to Special Operating Condition No. 4 to the permit, ABC is prohibited from commencing operations under the permit until the licensee of Station KCMI, Terrytown, Nebraska, commences program test operations under the terms of a construction permit that it has not yet filed an application for, let alone received. These circumstances, far beyond the control of KIMX, pose significant limitations on the manner and timing of KIMX's ability to undertake construction activities and cannot be resolved by action of KIMX.

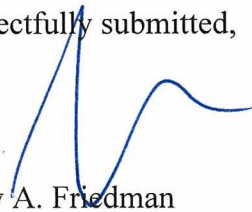
In addition, the Commission has granted tolling relief for similarly situated licensees.<sup>1</sup> It is well-settled that where parties are similarly situated, they are entitled to similar treatment by the Commission.

Under the circumstances presented, ABC is not in control of when and whether it can undertake, let alone complete, its construction obligations and is subject to the actions of the KCMI licensee. ABC has had discussions with the KCMI licensee in an effort to accommodate its desire to maintain its coverage area, but has not, as of yet, reached any such agreement.

Therefore, ABC submits that a substantial basis exists, as detailed in this tolling extension request, for the waiver/tolling to be extended for the requested term.

Should there be any questions in regard hereto, please communicate with the undersigned.

Respectfully submitted,



Barry A. Friedman

cc: Ms. Victoria McCauley, FCC Audio Division  
Mr. Steven A. Silberberg

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<sup>1</sup> Station KNRJ(FM), Cordes Lake, Arizona, secured such tolling relief, in a filing made on March 26, 2010, for its construction permit in File No. BPH-20070330BLN. That request was premised on similar conditions contained in its construction permit that prevented the KNRJ licensee from carrying out its construction of Station modifications.

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