

Victoria McCauley

From: Victoria McCauley
Sent: Thursday, January 21, 2016 3:25 PM
To: 'Dennis J.'
Subject: RE: WDLG(FM), Grove Hill, AL

Dear Mr. Kelly:

This is in reference to the Request for Waiver you filed on January 19, 2016, on behalf of La Promesa Foundation, for NCE FM Station WDLG, Grove Hill, Alabama (Fac. ID No. 86328), File No. BPED -20120313AEE. In that request, you state that an “unexpected dispute” with the land/tower owner has prevented installation of the transmitter equipment at the site, and that installation is expected tomorrow but “in an abundance of caution” you request an additional 30 days to resolve the issues with the owner and complete construction. Your request is denied.

Your request does not establish that a waiver is warranted in this case. The Commission's rules may be waived for good cause shown. When an applicant seeks waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action. The Commission must give waiver requests “a hard look,” but an applicant for waiver “faces a high hurdle even at the starting gate” and must support its waiver request with a compelling showing. Waiver is appropriate only if both (1) special circumstances warrant a deviation from the general rule, and (2) such deviation better serves the public interest.

As you point out, the waiver standard under Section 73.3598 of the rules is “rare and exceptional circumstances beyond the permittee’s control. Under our current broadcast station construction policies, the selection of a transmitter site is an independent business decision within a permittee’s control, and tolling or waiver of the expiration date are not available in circumstances involving the loss of a transmitter site. *Royce International Broadcasting Company*, Memorandum Opinion and Order, 23 FCC Rcd 9010, 9017 (2008) (site-related difficulties are not part of the tolling criteria); *see also 1998 Biennial Regulatory Review—Streamlining of Mass Media Application Rules and Processes*, Report and Order, 13 FCC Rcd 23056(1998) (*Streamlining R&O*), *recon. granted in part and denied in part*, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17540 (1999) (*Streamlining MO&O*). Typically, loss of a transmitter site stems from a permittee’s own misjudgment in specifying a site. *Dennis J. Kelly, Esq.*, Letter Order, 23 FCC Rcd 4786, 4788 (MB 2008). For example, the Commission has waived the three-year construction deadline following governmental actions that took the land by eminent domain, or highly restricted the periods during which construction could occur to accommodate the breeding and migration of endangered species first discovered at site during construction.

However, if a permittee can show that the station is substantially constructed, we may allow a brief period of additional time to allow completion of construction. In this case, the information presented in the waiver request is insufficient to establish that the station is substantially constructed, and we also deny the request for waiver on this basis.

Based on the above discussion, the Request for Waiver filed on behalf of La Promesa Foundation, IS DENIED. The WDLG(FM) construction permit (BPED-20120313921AEE) will expire on January 22, 2016.

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