



Federal Communications Commission
Washington, D.C. 20554

May 24, 2019

Nexstar Broadcasting, Inc.
Elizabeth Ryder, Esq.
545 E. John Carpenter Freeway
Suite 700
Irving, TX 75062

Re: Request for Tolling Waiver
KLBK-TV, Lubbock, TX
Facility ID No. 3660
LMS File No. 0000072922

Dear Licensee,

On May 17, 2019, Nexstar Broadcasting, Inc. (Nexstar), the licensee of KLBK-TV, Lubbock, Texas (KLBK or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant Nexstar's request and toll the expiration date of KLBK's construction permit through September 1, 2019.

Background. Pursuant to Section 73.3700(b)(5) of the Commission's rules (Rules), a station that was assigned a new channel as a result of the Commission's incentive auction and repacking process may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.¹ All subsequent requests for additional time to construct 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

Nexstar requests waiver of the tolling rule and tolling of its construction permit for its post-

¹ See 47 CFR § 73.3700(b)(5).

² See 47 CFR § 73.3700(b)(5)(i) citing 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) (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).

incentive auction channel facilities through September 1, 2019. KLBK is currently operating on its post-auction channel with temporary facilities.⁵ Nexstar states that weather, including torrential rain, flooding, high winds and tornadoes, has delayed the KLBK-TV rigging schedule. Nexstar states that the rigging crew, which was scheduled to install the Station's antenna in the first week of May 2019, will not be available to offload the antenna or commence the installation until after the first week of June 2019. Nexstar argues that the severe weather conditions were beyond its control and asks that they be considered "rare and exceptional circumstances" warranting waiver of the tolling rules. Accordingly, Nexstar seeks a waiver of the tolling rules and tolling of its construction permit deadline to September 1, 2019.

Discussion. Upon review of the facts and circumstances presented, we find that rare and exceptional circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station's construction permit to September 1, 2019. Specifically, extreme weather conditions have resulted in construction delays and prevented Nexstar from being able to complete construction of the Station's post-auction facility by its construction permit deadline. We also find that grant of Nexstar's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. KLBK has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind Nexstar that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other." Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Nexstar Broadcasting, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit for KLBK-TV, Lubbock, Texas **IS TOLLED to September 1, 2019**. Grant of this tolling waiver does not permit KLBK to recommence operation on its pre-auction channel. We also remind Nexstar that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁶

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Christine Reilly, Esq.

⁵ See LMS File No. 0000063689.

⁶ See 47 § CFR 73.3598(b).