

Construction Permit Terms and Extensions

By Peter Gutmann

As part of its efforts to streamline mass media application procedures and policies, the Commission has extended the term of most construction permits to three years, while limiting the circumstances under which the construction period may be further extended. Please note that this memorandum has been revised to include modifications adopted upon reconsideration of the original ruling in October, 1999.

The new construction period for all services has been increased to three years. The only exceptions will be DTV conversion and the return of analog TV channels, currently slated for 2006.

Under current procedures, the Commission routinely grants extensions of construction permits upon showings of substantial progress or delay despite substantial efforts. Under its new approach, the Commission will no longer entertain requests for extensions; nor would modifications or assignments of permits entitle the new holder to additional time within which to construct.

Instead, the Commission will require construction to be completed within three years, but will toll the construction period under only limited circumstances. The first circumstance is where construction is prevented due to natural disasters such as floods, tornadoes, hurricanes or earthquakes. Even then, the construction period would be suspended only for the length of time that a diligent permittee would need to recover from the effects of such an event.

The second circumstance is the failure of an FCC-imposed condition precedent to the commencement of operation. For example, the Commission often conditions operation resulting from a channel change upon the issuance of a license to another station to reflect its vacation of its old channel and its operation on another channel. However, the station subject to the condition precedent must certify that construction is complete prior to expiration of the permit.

The third circumstance under which the three-year construction period would be tolled is where the permit is encumbered by administrative or judicial review, including petitions for reconsideration, applications for review and appeals within the Commission. Also included would be law suits relating to any necessary local, state or federal requirement for the construction or operation of a station, including environmental matters. Omitted, though, are procedures before local governmental bodies. Thus, for example, a zoning application before a local zoning board would not qualify for tolling and would have to be handled within the three-year period, but the pendency of an appeal in a local court of a final zoning board denial would qualify for suspension.

Finally, the Commission will also toll permits in some circumstances involving LPTV permittees during the pendency of major change applications submitted during the last periodic LPTV filing window or the pendency of DTV displacement applications.

In lieu of requests for extension, permittees will be required to notify the FCC within 30 days of any circumstance that it believes should toll a construction period. Further notification must be provided promptly when the relevant matter has been resolved. A

permittee needing more than six months to resume construction after a natural disaster must submit additional supporting information at six-month intervals explaining construction progress and the proposed steps to be taken to resolve any remaining impediments. All of these notifications must be placed in the public file.

The Commission's new rules and policies apply to all construction permits granted after February 16, 1999. New permits will be issued for a three-year term. Existing permits in their initial construction period will be entitled to an automatic extension to three years upon a request to be filed at least 60 days prior to expiration (or any time prior to expiration for permits already having fewer than 60 days left). Pending applications for initial extensions will be automatically granted upon request to extend the permit to three years. Applications already on file for extensions that seek a total of more than three years within which to construct would be denied unless the applicant could show that it is entitled to the benefit of the tolling procedures. However, the Commission added an additional year to any permit already expired if the expiration had not become final. Pending permits for which extensions have not been requested must be covered by a license application or will be forfeited upon their current expiration.

While the intent of these changes is to simplify construction permit extension policies, their effect will be to impose upon permittees a greater need to anticipate zoning, weather, financial and other problems which often arise but which will now fall outside the scope of the Commission's tolling policies. In addition, should unavoidable problems arise within the few categories which the Commission deems relevant, it will be necessary to promptly report and document them. The matter of immediate concern is that outstanding permits and extension applications will require written requests to benefit from the expanded construction term.

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