

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Texas Grace Communications	)	File No. BPH-19960201MB,
	)	as modified by
Request to Toll the Period to	)	BMPH-19990217IB
Construct Unbuilt Station KRZB(FM)	)	
Archer City, Texas	)	
	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** October 26, 2001

**Released:** October 26, 2001

By the Commission:

1. The Commission has before it a January 16, 2001 Application for Review and amendments thereto filed by Texas Grace Communications ("Texas Grace"), permittee of unbuilt broadcast station KRZB(FM), Archer City, Texas. Texas Grace seeks review of a December 14, 2000 letter decision denying reconsideration of the staff's October 20, 2000 denial of its request to "toll" the KRZB construction period. *See* 47 C.F.R. § 73.3598(b)(1). On January 23, 2001, Texas Grace filed a second pleading requesting that the Commission also issue an "Emergency Stay" to toll the KRZB construction period during the pendency of this proceeding and any appeal thereof. For the reasons detailed below, we will deny Texas Grace's Application for Review as well as its stay request. However, on our own motion we will waive Section 73.3598 to extend Texas Grace's construction period to provide Texas Grace three years from the release date of this order to complete construction and to file a covering license application. We also provide additional guidance on our broadcast station construction requirements to ensure uniform application of those requirements in the future.

2. Background. Texas Grace's initial permit to serve Olney, Texas on Channel 248C2 (97.5 MHz) was granted on October 7, 1996. On August 7, 1997, Texas Grace filed a petition for rulemaking seeking to modify the FM Table of Allotments to change KRZB's community of license from Olney to Archer City, Texas. The staff adopted this proposal and added a new channel in Archer City on September 23, 1998.<sup>1</sup> That rule change became effective on November 17, 1998. To implement the allotment change, Texas Grace timely filed a minor change application to modify the community of license specified in its permit from Olney to Archer City.<sup>2</sup> On February 7, 2000 the staff granted Texas Grace's Archer City

<sup>1</sup> *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Olney, Archer [sic], Denison-Sherman and Azle Texas; and Lawton, Oklahoma)*, MM Docket No. 97-225, 13 FCC Rcd 18920, 18922 (1998) ("Archer City R&O") adopting proposal in 12 FCC Rcd 17512 (1997) ("Archer City Notice").

<sup>2</sup> However, Texas Grace never filed an application to implement a subsequent amendment of the Commission's FM Table of Allotments, 47 C.F.R. §73.202, which upgraded the Archer City allotment to Channel 248C1. Texas Grace requested that amendment, which became effective on January 18, 2000, as a counterproposal to the request of another party in an additional rulemaking proceeding. *In the Matter of Amendment of Section* (continued....)

application and extended the construction deadline to February 7, 2001.

3. While the Archer City application was pending, Texas Grace encountered various difficulties, including health problems of its principal. On March 5, 1999 Texas Grace notified the staff of its belief that its construction deadline should be extended. It made this request in accordance with our new broadcast construction rules, which provide for tolling in limited circumstances. 47 C.F.R. § 73.3598(b). *See Report and Order*, MM Docket No. 98-43, 13 FCC Rcd 23056, 23090-93 (1998) (“*Streamlining R&O*”), *recon. granted in part and denied in part*, 14 FCC Rcd 17525 (1999) (“*Streamlining MO&O*”). On October 20, 2000, the staff denied Texas Grace’s tolling request. Texas Grace filed a petition for reconsideration, which the staff denied on December 14, 2000. The staff concluded that none of the circumstances Texas Grace detailed -- health problems and various alleged permit “encumbrances” including rulemaking proceedings, related applications, and the amount of time the staff took to act on Texas Grace’s initial tolling request – were qualifying tolling events. The staff also held that Texas Grace was incorrect in its assertion that it was entitled under the Commission’s rules to a new three-year construction period to build in Archer City. Texas Grace filed the subject Application for Review on January 16, 2001. On January 23, 2001 Texas Grace filed an “Emergency Motion for Stay.”

4. On March 5, 2001, while the Application for Review and Stay Request were pending, the staff issued a letter at Texas Grace’s request concerning the status of the Archer City permit. The staff letter states:

Should the Commission grant review, the Commission’s *Order* will specify a new construction deadline. In the event that the Commission denies review, Texas Grace will have 79 days to complete construction and file a covering license application, commencing on the date such an *Order* is released.

The 79-day period is equal to the period of time between November 20, 2000, the date on which Texas Grace filed its Petition for Reconsideration, and the February 7, 2001 construction permit expiration. This suggests that the staff believed that the filing of the petition for reconsideration and pendency of the Application for Review of the denial of Texas Grace’s tolling request would qualify as “encumbrances,” and therefore would toll the running of the KRZB(FM) construction period.

5. Discussion. The Commission will grant an application for review only if the applicant demonstrates that the staff’s decision: (1) conflicts with statute, regulation, case precedent, or established Commission policy; (2) involves a question of law or policy that has not been previously resolved by the Commission; (3) involves precedent or policy that should be overturned or revised; (4) makes an erroneous finding as to an important or material question of fact; or (5) commits a prejudicial procedural error. 47 C.F.R. § 1.115(b)(2)(i)-(v). Texas Grace’s application for review consists of many allegations that focus on three core issues. First, Texas Grace contends that the staff erred in failing to treat the Archer City construction permit as an original construction permit for a “new” station that would be entitled to a new three-year construction period. Next, Texas Grace claims the staff erred in finding that its permit was not encumbered by administrative review. Finally, Texas Grace raises for the first time an allegation that the

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73.202(b), *Table of Allotments, FM Broadcast Stations (Tipton, Mangu, Eldorado and Granite, Oklahoma, and Archer City, Texas)*, MM Docket No. 99-23, 14 FCC Rcd 21161 (1999) (“*Oklahoma R&O*”).

staff's action conflicts with a staff waiver of the construction rules for unbuilt station KLTR(FM), Caldwell, Texas.<sup>3</sup>

6. The staff correctly rejected Texas Grace's claim that it is entitled to a new three-year construction period, to begin on February 7, 2000.<sup>4</sup> On that date, the Mass Media Bureau modified the Olney permit to change the community of license to Archer City. Texas Grace is simply mistaken in its view that the staff's October 1997 issuance of a Notice of Proposed Rulemaking, *proposing* at Texas Grace's request to amend the FM Table of Allotments to specify Archer City instead of Olney, in some fashion cancelled or terminated the outstanding Olney permit. It is further mistaken in asserting that the staff's subsequent modification of the Olney construction permit to specify Archer City is treated under the Commission's rules as a new "original" construction permit.<sup>5</sup>

7. Community of license changes are modifications of outstanding authorizations. *See* 47 C.F.R. § 1.420(i) (permit's community of license may be modified in a rulemaking proceeding if the amended allotment would be mutually exclusive with the present assignment). Pursuant to the rules governing such changes, the staff properly considered Texas Grace's request to change KRZB's community of license as a modification of the station's existing permit, and not as a new original permit. Significantly, Texas Grace's August 7, 1997 rulemaking petition properly requested "that the construction permit of KRZB be modified to specify Archer City, Texas, as the station's community of license" (emphasis added). In response, the Commission issued a rulemaking proposal and a final order, both of which refer to this matter as a modification. In filing its application to implement this rulemaking, Texas Grace submitted the appropriate fee (\$725) for an application to modify an existing permit, not the fee (\$2600) for a new construction permit. Further, in providing required responses on the application form about the purpose of the application, Texas Grace correctly described the application as a "modification" of the outstanding Olney permit, file number BPH-960201MB, rather than as a "new station."<sup>6</sup> Finally, the Archer City permit itself, file number BMPH-19990217IB, carries a modified FM station construction permit prefix, "BMPH", in which the "M" is an abbreviation for "modified" under the Commission's broadcast application numbering system.

8. Texas Grace maintains that the *Archer City Notice* issued in October 1997 rendered its Olney permit "no longer relevant or viable" because the Commission "noticed deletion of this Permit,

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<sup>3</sup> We have considered Texas Grace's allegations about the staff's handling of the December 14, 2000 letter, have read that letter, and find those allegations unsupported. Texas Grace has also complained that it has not been given due process in the treatment of its pleadings and arguments. We have considered these arguments and find them without merit. Texas Grace was entitled to seek Commission level review of the staff's decision. We have fully considered the application for review and amendments in a manner consistent with our statute and regulations. We find no basis for further review of these issues.

<sup>4</sup> Texas Grace based its three-year claim, in part, on allegedly having received staff advice to that effect prior to issuance of the Archer City permit. While we would regret any erroneous advice that may have been given, it is well established that a permittee may not rely on informal advice from staff. *See Texas Media Group, Inc.*, 5 FCC Rcd 2851, 2852 (1990), *aff'd sub. nom, Malkan FM Associates v. FCC*, 935 F.2d 1313 (D.C. Cir. 1991).

<sup>5</sup> *See* 47 C.F.R. § 73.3598(a) (original FM construction permits shall specify a construction "period of three years from the date of issuance of the original construction permit").

<sup>6</sup> *See* Application, Section I, Section V-B, and Exhibit 2. *See also* Section V-B and Exhibits 3-4 of Texas Grace's June 22, 1999 amendment.

stating that the public interest would better be served if KRZB instead provided service at the new community of Archer City. . .” *Application for Review* at 3, 6. Texas Grace’s argument is erroneous. As a threshold matter, it was Texas Grace that filed a petition for rulemaking and requested the reallocation of its channel to Archer City and modification of its permit to specify Archer City; nothing compelled it to seek that reallocation and modification. Furthermore, even after it initiated the rulemaking proceeding, nothing prevented it from constructing its station at Olney. In this connection, the *Archer City Notice* did not find that “the public interest would better be served if KRZB instead provided service at the new community of Archer City,” as Texas Grace asserts; it simply stated that “petitioner’s proposal warrants consideration” and sought comment on that proposal. *Archer City Notice*, 12 FCC Rcd at 17513. That Notice did not delete the Olney channel or otherwise invalidate Texas Grace’s permit, as Texas Grace contends. Nor did the Report and Order in that proceeding impair Texas Grace’s authority to construct its station at Olney.<sup>7</sup> Texas Grace had valid continuing authority to construct its station in Olney until February 7, 2000, when the staff, at Texas Grace’s request, modified the permit to specify Archer City as the community of license.<sup>8</sup>

9. We recognize, of course, that Texas Grace filed the Archer City petition for rulemaking because it preferred to construct a station that would serve this community. When the Commission decided in the *Streamlining R&O* to expand the radio station construction period from 18 to 36 months, it also eliminated former Section 73.3535(d) and its former practice of providing additional time for construction after a permit has been modified. *Streamlining R&O*, 13 FCC Rcd at 23090 (“in light of these new procedures, we eliminate the current practice of providing additional time for construction after a permit has been modified or assigned.”). On reconsideration, the Commission was specifically requested to expand tolling during “the pendency of petitions for rule making affecting a station’s frequency and/or class” and “modification applications.” *Streamlining MO&O*, 14 FCC Rcd at 17538-39. We denied those petitions. In so doing, it was our intent to limit tolling to those circumstances explicitly mentioned in the *Streamlining* decisions or in our rules. See 47 C.F.R. § 73.3598. Thus, a construction deadline would not be extended when, as here, the Commission modifies a station’s original permit at the station’s request or when the applicant otherwise voluntarily participates in a rulemaking proceeding.<sup>9</sup> This policy is designed

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<sup>7</sup> The *Archer City R&O* conditioned modification of Texas Grace’s permit on submission of a minor change application and the filing of any required environmental assessment for the new transmitter site. See *Archer City R&O*, 13 FCC Rcd at 18922. Until the application was submitted and granted, Texas Grace continued to have authority to construct its station at Olney.

<sup>8</sup> In a July 27, 2001 supplemental submission, Texas Grace seeks to clarify its arguments concerning the starting date of its three-year period. Texas Grace maintains that it had no authority to construct any station on February 16, 1999, a date used to determine a permittee’s eligibility to avail itself of the three-year provisions of the *Streamlining MO&O*. It asserts that it did not apply for an Archer City permit until the following day, February 17, 1999, and that the community of Olney was deleted from the table of allotments, effective November 17, 1998. Accordingly, Texas Grace believes that its three year construction period could not start, at the earliest, until the grant of the Archer City permit. This view is incorrect. On February 16, 1999, Texas Grace held a valid permit for Olney and thus was entitled, pursuant to the *Streamlining MO&O*, to an expiration date no earlier than December 21, 2000. *Streamlining MO&O*, 14 FCC Rcd at 17536. Texas Grace received what it was entitled to because its permit, as modified, did not expire until February 7, 2001.

<sup>9</sup> Texas Grace initiated the rulemaking proceeding in Docket No. 97-225, concerning the Olney and Archer City allotments, and other parties filed counterproposals. Texas Grace maintains that rulemaking proposals by others drew it into subsequent Archer City rulemaking proceedings involuntarily. With respect to Docket No. 99-23, the record indicates that the party initiating that proceeding proposed changes only to allotments in Oklahoma. (continued....)

to encourage prompt construction and to discourage permittees from using the permit modification process to warehouse spectrum. *Streamlining R&O*, 13 FCC Rcd at 23093. It is also a policy designed to promote prompt introduction of service to the public by clearly placing on each permittee's shoulders the burden of completing construction by a certain date. Indeed, our action in the *Streamlining* Order doubling the construction period for a new radio station reflected a specific balancing of our interest in expeditious construction and avoiding waste of Commission and applicant resources on an endless variety of requests to extend the authorized construction period. *See Streamlining MO&O*, 14 FCC Rcd at 17533, 17539. The substantial additional time afforded by the new construction period was in large part intended to permit applicants enough time to resolve local land use issues and to make whatever reasonable changes in its permit or proposed facilities were necessary, and still be able to construct the station without seeking extensions from the Commission. *Id.* at 17539-17541. Accordingly, the staff acted consistently with our intent when it included the period during which the Olney construction permit was outstanding and unencumbered (October 7, 1996 through February 7, 2000) in calculating the construction deadline for the Archer City facility.

10. Unfortunately, in the course of the present proceeding, we have come to realize that our intent may not have been completely clear to permittees with then-outstanding modification requests stemming from rulemaking proceedings. Specifically, while noting our receipt of requests to expand our tolling provisions to recognize modifications and rulemaking requests, we denied those requests without discussion. *See Streamlining MO&O*, 14 FCC Rcd at 17538. A permittee, like Texas Grace, might have concluded that reliance on mere facilities modifications involving frequency or class would be insufficient to trigger tolling, but that a facility change coupled with a community of license change might be treated differently. In view of this circumstance, we will waive our rules to provide Texas Grace with an additional three years to complete construction, commencing with the release date of this order. With respect to future cases, however, we emphasize that only the circumstances explicitly identified in Section 73.3598(b) of our rules and in our *Streamlining* decisions will toll a permit. These circumstances are limited to the following: (1) construction is prevented due to an act of God defined in terms of natural disasters (Section 73.3598(b)(i)); (2) the grant of the permit is the subject of administrative or judicial review (Section 73.3598(b)(ii)); (3) there is failure of a Commission-imposed condition precedent to

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*See Oklahoma R&O*, n. 2 *supra*. The Oklahoma proposals were fully spaced to the town center of Archer City, Texas but Texas Grace believed that they would not provide full spacing to Texas Grace's preferred Archer City site. Rather than filing opposing comments, or a counterproposal limited to Oklahoma allotments, Texas Grace filed a counterproposal that would upgrade the Archer City, Texas allotment. Absent Texas Grace's counterproposal, changes to the Archer City allotment would never have been at issue. With respect to the remaining proceeding, Docket No. 00-148, Texas Grace reports that a party filing a counterproposal in that proceeding proposed to modify the channel of the Archer City allotment. No decision on that proposal has yet been reached. *See Notice of Proposed Rulemaking*, MM Docket No. 00-148 (Quanah, Texas), 15 FCC Rcd 15809 (2000). We note that the mere pendency of a rulemaking proposal does not encumber a permittee's ability to construct pursuant to its existing authorization. Further, these circumstances pose no financial risk to the permittee who constructs during such a proceeding. Whenever an existing licensee or permittee is ordered to change frequencies involuntarily to accommodate a new channel allotment, longstanding Commission policy requires the benefiting party or parties to reimburse the affected station for costs incurred. *See Circleville, Ohio*, 8 FCC 2d 159 (1967). Thus, we reject Texas Grace's tolling argument based on allegedly involuntary Archer City allotment changes. The proceedings in MM Dockets 97-225 and 99-23 were voluntary, and were resolved in Texas Grace's favor. The proceeding in Docket No. 99-148 remains ongoing and poses no financial risk to Texas Grace. We conclude that these proceedings have posed no impediment to the prompt construction of the authorized Archer City facilities.

commencement of operation (*Streamlining MO&O*, para. 39); or (4) there is one of the limited circumstances involving LPTV permittees discussed in paragraph 40 of the *Streamlining MO&O*. As we also have stated, we will entertain waiver requests if there are rare and exceptional circumstances beyond the permittee's control which would warrant the tolling of construction time (*Streamlining MO&O*, para. 42).

11. In the interest of thoroughness and to provide guidance to future permittees, we next consider Texas Grace's argument that the staff erred in denying its tolling request. As noted above, the Commission tolls a station's three-year construction period when the permittee notifies the staff, pursuant to 47 C.F.R. § 73.3598(c), that construction has been encumbered by administrative or judicial review of a grant of a construction permit; by judicial review of any cause of action relating to necessary local, state or federal requirements for the construction and/or operation of the station; and/or by an "act of God" (*i.e.*, weather related disasters such as tornadoes, hurricanes, floods, and earthquakes). *Streamlining R&O*, 13 FCC Rcd at 23091. Permit expiration also would be tolled if a party promptly builds but cannot commence operations as required, due to a failure of a Commission-imposed condition precedent. *Streamlining MO&O*, 14 FCC Rcd at 17540. Upon resolution of the *bona fide* tolling event, we allow the permittee to recoup the time during which its permit was encumbered, adjusting the expiration date of the permit so that the permittee will receive a full unencumbered three years to construct.

12. Texas Grace alleges that the staff erroneously ignored certain events that Texas Grace contends would constitute "administrative review" within our tolling rules. According to Texas Grace, the staff characterized its tolling request as relying merely on Texas Grace's own rulemaking requests, but erroneously ignored other staff "review" functions including the "consideration" of counterproposals, issuance of notices of proposed rulemaking, amendment of the table of allotments, "consideration" of Texas Grace's application to implement the change in community of license, and ongoing "consideration" of a rulemaking proposal from another party that has the potential to modify Texas Grace's assigned channel from 248C2 to 230C1. Texas Grace maintains that tolling is warranted because these staff actions "obstructed KRZB's ability to construct its pending Archer City broadcast station." Texas Grace also claims that the staff ignored its argument that its permit was tolled for purposes of administrative review during the pendency of its initial tolling request.

13. We do not find these arguments persuasive. The staff's December 2000 action thoroughly discussed all aspects of Texas Grace's tolling request, specifically identifying and summarizing seven of its arguments. These included Texas Grace's claims of rulemaking as administrative review, health-related problems as "acts of God," and the staff's consideration of its initial tolling request as administrative review. The staff correctly found that neither the rulemaking nor any of the other matters cited by Texas Grace constitute "administrative review" under the new construction period requirements. For tolling purposes, our rules define administrative review as consideration of "petitions for reconsideration and applications for review of the grant of a construction permit." 47 C.F.R. § 73.3598(b)(ii). It is not triggered, as Texas Grace argues, by every action that may need staff approval. Therefore, we find that Texas Grace's arguments were thoroughly considered and properly resolved by the staff, and we uphold the staff's decision for the reasons stated therein. *See e.g., WAMC, Inc.*, 10 FCC Rcd 12219 (1995) (denying application for review raising essentially the same arguments as in petition for reconsideration).

14. Finally, Texas Grace now raises two additional arguments for the first time. It maintains that the denial of its tolling request is inconsistent with the treatment afforded a Caldwell, Texas permittee. It also indicates that it is having difficulty obtaining financing to build the station because its bank has advised that "the shortchanged construction time would pose an unacceptable risk to justify the loan." The Commission's rules provide that "no application for review will be granted if it relies on questions of fact

or law upon which the designated authority has been afforded no opportunity to pass.” See 47 C.F.R. § 1.115(c). Accordingly, we decline to address these issues. In any event, we note in passing that *Caldwell* involved a fundamentally different factual situation<sup>10</sup> and that a permittee’s financial difficulties are not grounds for tolling.<sup>11</sup> Accordingly, we deny Texas Grace’s Application for Review and affirm the staff’s decision.

15. Although we affirm the staff’s December 14, 2000 decision, which properly denied tolling, we take this opportunity to correct certain staff errors during the course of this proceeding, which resulted in extending the deadline by which Texas Grace must complete construction. As a preliminary matter, the staff’s designation of February 7, 2001 (one year from grant of modification) as the expiration date of Texas Grace’s permit was in error. The *Streamlining R&O*, 13 FCC Rcd at 23090, eliminated the former practice of giving additional time for permit modifications. Texas Grace’s Archer City permit should have specified, pursuant to *Streamlining MO&O*, 14 FCC Rcd at 17536, December 21, 2000 as the correct expiration date. That is the final date to which we extended all valid outstanding broadcast permits that otherwise would have expired previously.

16. The staff also erred in its March 5, 2001 status letter advising Texas Grace that it would receive an additional 79-day period for construction if review is denied. That calculation erroneously assumes that the Commission should treat the pendency of Texas Grace’s Petition for Reconsideration and its Application for Review as qualifying “administrative review” tolling events. Those two pleadings, however, were filed in response to the staff’s denial of tolling, whereas we restrict “administrative review” to petitions for reconsideration and applications for review which challenge grants of construction permits or of permit extensions, and judicial appeals of Commission action concerning such grants. Thus, if the staff grants an initial permit or a tolling request and another party seeks review of that grant, we do not require a permittee to build pursuant to a grant that is not final and subject to challenge. In contrast, a permittee’s unilateral request for review of a denial of a request for additional time to construct, as in the present case, does not raise similar issues and does not fall within the scope of “administrative review” for tolling purposes.<sup>12</sup> 47 C.F.R. § 73.3598(b)(ii). *Streamlining R&O*, 13 FCC Rcd at 23091.<sup>13</sup>

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<sup>10</sup> In *Caldwell*, the staff concluded that allocations rulemaking proceedings and related matters generally do not qualify for tolling, but waived the construction rule based on its finding that the lengthy agency and court review of an involuntary channel change in that case created unique circumstances analogous to the administrative and judicial review of the grant of a construction permit. *Letter to Robert J. Buenzle, Esq. from Linda Blair, Chief, Audio Services Division* (October 31, 2000) (“*Caldwell*”). Unlike *Caldwell*, there has been no review of any of the Archer City rulemaking proceedings, nor are the circumstances here analogous at all to that case. See also note 9 *supra*.

<sup>11</sup> To the extent that Texas Grace argues that the staff’s actions made it difficult for it to obtain financing, we note that Texas Grace certified when it first applied for its permit that sufficient liquid assets were on hand or that sufficient funds were available from committed sources to construct the proposed facility and to operate it for three months without revenue. See *Application BPH-19960201MB*, Section III, Financial Qualifications. See also, *Merrimack Valley Broadcasting, Inc.*, 82 FCC 2d 166, 167 (1980). Cf. *Instructions for FCC Form 301, General Instruction K* (May 1999) (application form in use today, which no longer contains a financial certification, continues to require reasonable assurance of committed financing sufficient to construct and operate without revenue for three months).

<sup>12</sup> We note that Texas Grace makes a related, but expanded, argument in its Application for Review. Just as we find the staff was mistaken in treating Texas Grace’s filing of its Petition for Reconsideration on November 20, (continued....)

17. In sum, we conclude above that Texas Grace has no right to additional time to construct its station under our current rules, as modified in the *Streamlining* proceeding. Nevertheless, due to a possible previous lack of clarity in our policy with respect to changes of communities of license, we will waive our rules on our own motion so as to extend the expiration date of Texas Grace's construction permit to three years from the release date of this order. We deny Texas Grace's emergency stay request to toll the construction period during administrative review of its Application for Review and judicial review of this order. We also deny the request for a stay pending any administrative or judicial review. For the reasons set forth above, the staff's rejection of Texas Grace's arguments fully accorded with our rules, and it is thus unlikely to prevail on the merits of any appeal. See *Virginia Ass'n v. FCC*, 259 F.2d 921 (D.C. Cir. 1958), modified, *Washington Metropolitan Transit Authority v. Holiday Tours*, 559 F.2d 841 (D.C. Cir. 1977). Further, there is no evidence of irreparable injury here, as Texas Grace may well complete construction prior to the expiration of the permit, which has been substantially extended by waiver herein. *Id.* Indeed, since Texas Grace is being granted more time to construct than it would be entitled to without a rule waiver, it has suffered no injury at all.

18. Accordingly, IT IS ORDERED that the Application for Review filed by Texas Grace Communications IS DENIED and that its Motion for Stay IS DENIED. On our own motion, 47 C.F.R. Section 73.3598(a) IS WAIVED to provide that the construction permit for station KRZB(FM) will expire three years from the release date of this order. Texas Grace must complete construction by that date and timely file an application for a license to cover the authorized facilities. Failure to file a timely license application will result in the automatic cancellation of the KRZB(FM) construction permit.

#### FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

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2000 as initiating administrative review, we similarly reject Texas Grace's argument that it would qualify for tolling from October 20, 2000 (the date the staff denied its tolling request) continuing to the date on which any judicial appeal from this decision is resolved.

<sup>13</sup> The treatment of the filing of the Petition for Reconsideration and Application for Review as tolling events was also erroneous for a second, independent reason. When Texas Grace filed its Petition for Reconsideration on November 20, 2000, it had already received an unencumbered construction period of four years, one month, and 13 days from the October 7, 1996 grant of KRZB's original permit, whereas the *Streamlining R&O*, in permitting the extension of then-outstanding construction permits to take advantage of the new three-year construction period and tolling procedures specifically noted that "[n]o additional time will be granted when the permittee has had, in all, at least three unencumbered years to construct." *Streamlining R&O*, 13 FCC Rcd at 23092. For these reasons, Texas Grace will not be eligible for a further extension of the construction deadline we provide by our action herein.