

ORIGINAL✓

RECEIVED

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
MCLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wileyrein.com

February 25, 2014

2014 FEB 27 A 6:05

Mark Lipp
202.719.7503
mlipp@wileyrein.com

VIA HAND DELIVERY

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

ACCEPTED/FILED

FEB 25 2014

Federal Communications Commission
Office of the Secretary

Re: **Request For Waiver of 47 C.F.R. § 73.3598**
Rodney D. Tow, Trustee
(NEW FM station) Waynesboro, Georgia
(NEW FM station) Erie, Illinois
Facility Identifier Numbers: 166071, 166073

Dear Ms. Dortch:

Rodney D. Tow, Trustee, permittee of the above captioned permits, hereby requests a waiver of Section 73.3598(d) of the Commission's Rules until he sells the permits.¹ A waiver is warranted because as a bankruptcy trustee, he was appointed to sell, rather than construct, the two permits. There are no funds available in the bankruptcy estate to construct these facilities and his appointment by the Federal Bankruptcy Court only provides for authority to sell these permits.

On May 22, 2013, the U. S. Bankruptcy Court, Southern District of Texas appointed Rodney D. Tow as Trustee for the two permits formerly held by Ace Radio Corporation ("Ace"). On July 5, 2013, the Commission approved the application to assign these two permits to the Trustee (BAPH-20130621AAZ, ABA). The Bankruptcy Court appointment was made for the sole purpose of having the permits sold for the benefit of the creditors of Ace. There were no other assets in the estate and therefore no funds which would enable the Trustee to construct the two stations. The two permits are set to expire on May 9, 2014.

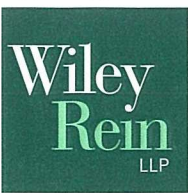
¹ This section provides that, "Any construction permit for which construction has not been completed and for which an application for license has not been filed, shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission."

Marlene H. Dortch
February 25, 2014
Page 2

Although 73.3598(b) does not expressly identify a bankruptcy action as a tolling event, the Commission has recognized that a pending bankruptcy case is a “cause of action pending before any court of competent jurisdiction relating to any necessary local, state or federal requirement for the construction or operation of the station” under 73.3598(b)(2). *See Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Second Report and Order*, 26 FCC Rcd. 10732 ¶ 18 (2011) (“We reiterate that after May 1, 2015, low power television stations that experience a delay in digital construction due to one of the tolling events listed in Section 73.3598(b) of the rules (i.e., act of God, administrative or judicial review, pending court action related to requirements for construction or operation of the station, obtaining international coordination, or bankruptcy of station licensee) may follow the notification procedures in Section 73.3598(c) and request that their digital construction deadline be tolled. This shall be the only provision for obtaining additional time to complete construction for digital stations in the low power television service.”); *Implementation of DTV Delay Act, Third Report and Order and Order on Reconsideration*, 24 FCC Rcd. 3399 n.156 (2009) (“We note that the Section 73.3598(b) tolling standard does not provide relief for financial hardship, except that paragraph (b)(2) would toll the construction deadline for a station that could not build because of a pending bankruptcy court action.”).²

Grant of such a waiver would be in the public interest. A substantial auction payment was made when these permits were obtained. Creditors of the estate stand to lose their investment. Unfortunately, as mentioned earlier, the only assets in the estate are the permits. There are no funds to construct. Thus, for the purpose of this waiver request, the Bankruptcy Court action should be considered pending as long as the Trustee remains in control. Thus, the Trustee requests tolling for an initial six month period. The Trustee will provide updates on his efforts to sell the permits or if circumstances change.

² See *Letter to WWAZ License, LLC and KDMI License, LLC* (June 13, 2012).



Marlene H. Dortch
February 25, 2014
Page 3

Accordingly, Rodney D. Tow, Trustee respectfully requests that the Commission waive Section 73.3598(d) of its Rules to permit tolling of the construction deadline for the above referenced permits.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Mark N. Lipp", written over the printed name.

Mark N. Lipp
(Counsel to Rodney D. Tow, Trustee)

cc: Victoria McCauley, Audio Division, Media Bureau