

## **Tolling Request of Construction Permit File No. 0000056042**

Cross Hill Communications (“CHC”), licensee of Digital TV Station WYCI, Saranac Lake, NY (Facility ID No. 77515), herein requests, pursuant to Section 73.3598(b) of the FCC’s rules, that the construction permit to move WYCI to expanded facilities on its post-Incentive Auction channel be tolled (the “Repack CP”). This request is necessary due to inclement weather that is preventing access to the facility to complete construction. Alternatively, CHC requests to waive Section 73.3598 and to toll the expiration of Repack CP due to “rare and exceptional circumstances.”

Background: CHC’s Repack CP expiration date was changed from February 28, 2019 to September 1, 2018, due to a grant of an early transition STA to accommodate T-Mobile’s early deployment (File 0000053983). Although CHC undertook efforts to meet the new September transition deadline, CHC was required to file a minor modification to convert the Repack CP to a distributed transmission system (DTS) after a structural analysis revealed that the tower identified in the Repack CP would not allow for the approved antenna height (File No. 0000056042) (the “DTS Conversion Application”). The DTS Conversion Application was submitted to the FCC on July 5, 2018; however, it was not granted until November 8, 2018 because the application required Canadian coordination. This further delayed the buildout process. Recognizing that the pending application would cause a delay, CHC also submitted a request for extension of the Repack CP, pursuant to the Incentive Auction Report and Order.<sup>1</sup> The Report and Order clarified that after one construction permit extension period, the licensee must seek tolling.

Request. While CHC moved swiftly toward constructing facilities pursuant to the Repack CP, severe snowstorms impacted the Saranac Lake area by mid-November. Consequently, by the beginning of December, the primary tower site was completely snowed in and is now only accessible by snowmobile. Given the mountainous terrain and climate of this area of upstate New York, it will take months for the primary transmission site to become accessible again to bring the tower reinforcement and rigging equipment to the site.

Section 73.3598(b) of the Commission’s rules lists certain causes not under the control of the permittee that shall toll the period of construction for a construction permit. Among those causes are acts of God, which reasonably includes extreme winter weather in remote, mountainous terrain. The weather, of course, is only the exacerbating factor here – CHC had to wait more than five months for Canadian coordination before it could move forward with construction planning, and by then it was too late. Delays due to administrative review are among the delineated bases for which tolling of a construction permit expiration may be granted.

It is possible that, due to a lower elevation and easier access by road, the secondary transmission site of the DTS will be accessible in the next few months. CHC has ordered the transmitter for the DTS 2 facility and the antenna is already in hand. Therefore, in the interest of returning to operations as quickly as possible to provide service to the community, CHC commits to constructing the DTS 2 facility as soon as practicable and will seek to resume

---

<sup>1</sup> See *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, FCC 14-50 (June 2, 2014).

modified operations on it pursuant to an STA. CHC requests the FCC take this commitment to make a good faith effort to partially build-out into consideration.

Should the Commission find that tolling does not lie under these circumstances, CHC respectfully requests, in the alternative, that the FCC waive Section 73.3598 and toll the expiration of the Station's Repack in light of the unique circumstances presented. CHC has encountered the above-mentioned delays, including both the delay resulting from international coordinating of a necessary construction permit modification application and subsequent weather limitations in mountainous terrain, which are rare and exceptional circumstances outside of the station's control. As in the Commission's grant of several recent waiver requests<sup>2</sup>, good cause exists to waive Section 73.3598 and toll the expiration of the Repack CP for 126 days – the time from the date of the filing of the DTS Conversion Application to its grant date.

Based on the foregoing, CHC requests that the Repack CP be tolled, or that the FCC waive Section 73.3598 and toll the expiration of Repack CP.

---

<sup>2</sup> See, e.g., *Letter to Marnie K. Sarver, Esq., KETD(DT), Castle Rock, CO, Request for Tolling* (Video Div., July 17, 2015); *Letter to David A. O'Conner, Esq., WBUP(TV), Ishpeming, Michigan, Request for Tolling* (Video Div., July 17, 2015).