

**Request for Waiver of Section § 73.3598(b) for,
and Further Extension of, WCVB-TV's Repack CP**

A. Introduction and Background

Hearst Stations Inc. (the “licensee” or “applicant”), licensee of WCVB-TV, Boston, Massachusetts (Fac. ID No. 65684) (WCVB-TV”), respectfully requests an extension of time to complete construction of its full, authorized post-transition facilities, i.e., the facilities specified in WCVB-TV’s repack construction permit (“CP”) issued in LMS File No. [0000024905](#) and subsequently expanded in LMS File No. [0000034567](#). WCVB-TV was granted an initial extension of its repack CP in LMS File No. [0000072330](#), such that the repack CP is now scheduled to expire on January 29, 2020. The tower on which WCVB-TV’s pre-transition facility was located and on which its post-transition facility will be located is overseen and managed by landlord American Tower. As such, American Tower has been managing the repack project at the site.

WCVB-TV’s pre-transition facility utilized an antenna and transmission line which was shared with three other television stations—WBZ-TV, WGBX-TV, and WSBK-TV—all of which were repacked. In addition, the tower also hosts WGBH-TV,¹ WYDN(TV), WBTS-LD, WBUR-FM, and WKLB-FM. The tower landlord, American Tower, constructed a new, side-mounted antenna system, which operated prior to the Phase 4 deadline as an interim facility for WFXT(TV). At the Phase 4 transition deadline, this new, side-mounted antenna became the interim main facility for WUTF-TV and the post-transition aux antenna for WFXT(TV) while WFXT(TV) moved its post-transition operations over to its post-transition main facility at the same site where WCVB-TV has its post-transition aux antenna. And, at the Phase 4 transition deadline, WCVB-TV timely began its post-transition interim operations from its aux antenna (*see* LMS File No. [0000080192](#)), which is not co-located with WCVB-TV’s future post-transition main facility. We provide this detail (which is not all of the detail involved with the repack projects for the multi-user site) to illustrate the degree of difficulty and number of “moving parts” at issue.

The coordination necessary between and among American Tower and the current television stations at this site (all 7 of which being repacked) and the two FM operators makes this one of the most complex repack sites in the country. In addition, the tower had to undergo structural reinforcement prior to the installation of the final post-transition equipment, which will include the addition of a second side-mounted antenna to accommodate the post-Phase 4 relocation of WNEU-TV’s main transmit facility.

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.² All subsequent requests for additional time to construct

¹ WGBH-TV’s pre-transition antenna was also part of the lower, separate portion of the same antenna stack comprised of the WCVB-TV/WGBX-TV/WSBK-TV antennas and made use of the same combiner as well.

² *See* 47 C.F.R. § 73.3700(b)(5).

are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.³ Indeed, the Media Bureau has observed that if a station's repack construction has been disrupted by circumstances other than those provided for in its tolling rules, "[s]tations may also seek a waiver of the tolling rule to receive additional time to construct in cases where 'rare or exceptional circumstances' prevent construction."⁴

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.⁵ 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.⁶

B. Waiver Standard and Public Interest Considerations

Generally, the FCC may grant a waiver for "good cause shown."⁷ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁸ In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁹ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹⁰

As demonstrated herein, good cause exists for waiver of Section 73.3598(b) in this

³ See 47 C.F.R. § 73.3700(b)(5)(i) (citing 47 C.F.R. § 73.3598(b)).

⁴ *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd ¶13 n.34 (MB and IATF 2018).

⁵ See *id.*

⁶ See *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes*, Memorandum Opinion and Order, 14 FCC Rcd 17525, ¶ 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" and concluding that in such "limited circumstances," the Commission would entertain requests for waiver of its "strict tolling provisions").

⁷ 47 C.F.R. § 1.3.

⁸ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁹ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹⁰ See *Northeast Cellular*, 897 F.2d at 1166.

particular circumstance. Among the reasons that support the Media Bureau taking action favorable to the applicant are as follows:

- WCVB-TV timely terminated its pre-transition channel operations and has been operating on its post-transition channel using interim facilities since the end of Phase 4, which is the phase to which the station was originally assigned.
- Because WCVB-TV's timely transition has already occurred, no interference issues would be caused by a further extension of WCVB-TV's repack CP, and a grant would not delay, alter, or affect in any way the nationwide transition of full power and Class A stations nor the offering of new 600 MHz wireless services by new 600 MHz wireless licensees.
- WCVB-TV's tower is located in the town of Needham, Massachusetts, which requires American Tower to have a special permit before top-mounted antennas can be installed. The special permit was finalized in late December 2019. Accordingly, American Tower anticipated that its tower crew would return in early January 2020 following finalization of the special permit and passage of the holidays. In fact, American Tower advised on January 16, 2020, that the tower crew will return to the site to continue work on January 29, 2020, which is the same day that WCVB-TV's repack CP is currently scheduled to expire.¹¹ The latest forecast for completion of the project is obviously beyond January 29, 2020. At this point, in light of the possibility of inclement weather and other potential slippage in the construction schedule due to causes beyond American Tower's and WCVB-TV's control, WCVB-TV is optimistic that a further extension of its repack CP until the end of April would be appropriate and would build in more than enough "cushion" to account for weather or other unanticipated circumstances.
- The Media Bureau has already granted a similar request filed by WBZ-TV (*see* LMS File No. [0000092274](#)), whose final post-transition facility will be co-located with WCVB-TV's final post-transition facility, which is subject to the same circumstances as WCVB-TV.

C. Conclusion

In sum, grant of this Section 73.3598(b) waiver request (i) would be consistent with other actions already taken by the Media Bureau for co-located stations, (ii) would recognize that WCVB-TV took appropriate and timely action to ensure a timely transition by its assigned Phase 4 deadline, (iii) would demonstrate an understanding that the factors causing the further delay in completion of WCVB-TV's final post-transition facility have been beyond the station's control, (iv) will not undermine or delay any post-Auction transition goals, and (v) does not require waiver

¹¹ WCVB-TV views January 16, 2020, as the definitive date for purposes of the tolling rule because at that point it became known with certainty that WCVB-TV's already-extended repack CP would run out before construction even recommenced at the tower site.

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of any interference regulations or policies. Accordingly, grant of this request is in the public interest.

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