



Federal Communications Commission
Washington, D.C. 20554

February 18, 2020

Nexstar Broadcasting, Inc.
Elizabeth Ryder
545 E. John Carpenter Freeway
Suite 700
Irving, TX 75062

Re: Request for Tolling
WFXQ-CD, Springfield, MA
Facility ID No. 2650
LMS File No. 0000094953

Dear Licensee,

On January 3, 2020, Nexstar Broadcasting, Inc. (Nexstar), the licensee of WFXQ-CD, Springfield, Massachusetts (WFXQ-CD or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant Nexstar's request and toll the expiration date of WFXQ-CD's construction permit for 180 days to July 27, 2020.

Background. 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.¹ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.² 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.³ 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.⁴

¹ See 47 CFR § 73.3700(b)(5).

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

³ *Id.*

⁴ See 1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, and Processes, Memorandum Opinion and Order, 14 FCC Rcd 17525, 17542, para. 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." The Commission concluded that in such "limited circumstances," it would entertain requests for waiver of its "strict tolling provisions"); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

Nexstar requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities. WFXQ-CD is currently silent.⁵ WFXQ-CD was previously granted a construction permit extension through January 29, 2020.⁶ Nexstar states that the Station's existing tower was deemed insufficient to support its post-auction channel facilities. Consequently, Nexstar will be constructing a new tower. However, Nexstar reports that engineering delays, including finalizing the new tower structure foundation design, and other administrative delays, including the permitting and local oversight process, have delayed progress towards completing construction of the new structure. Therefore, Nexstar requests that the Commission waive its tolling rule and toll the WFXQ-CD construction permit expiration date for 180 days to July 27, 2020.

Discussion. Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station's construction permit to July 27, 2020. Nexstar has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of Nexstar's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WFXQ-CD has already ceased operation on its pre-auction channel and is silent. WFXQ-CD's programming is available to viewers over commonly owned stations WWLP(TV), Springfield, Massachusetts. WFXQ-CD's contour is entirely encompassed within the contour of WWLP. Therefore, viewers will be able to continue receiving the programming aired by WFXQ-CD without interruption. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind Nexstar that pursuant to the Spectrum Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."⁷ Additional expenses incurred, such as expenses resulting from changes in a Station's transition plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Nexstar Broadcasting, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000027611) for WFXQ-CD, Springfield, Massachusetts **IS TOLLED to July 27, 2020**. Grant of this tolling waiver does not permit WFXQ-CD to recommence operation on its pre-auction channel. We also remind Nexstar that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁵ See LMS File No. 0000079139. WFXQ-CD was repacked from channel 28 to channel 21.

⁶ See LMS File No. 0000079221.

⁷ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

⁸ See 47 § CFR 73.3598(b).