

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

A. Introduction and Background

The University of North Carolina (the “licensee” or “applicant”), licensee of WUNU, Lumberton, North Carolina (Fac. ID No. 69416) (“WUNU”), respectfully requests a further extension of time to complete construction of its full, authorized post-transition facilities, i.e., the facilities specified in WUNU’s repack construction permit (“CP”) issued in LMS File No. [0000025918](#) and modified in LMS File No. [0000034418](#). WUNU was granted an initial extension of its repack CP in LMS File No. [0000074599](#), such that the repack CP is now scheduled to expire on March 4, 2020.

Significantly, too, WUNU was granted a phase change to move from its originally-assigned Phase 5 transition deadline to Phase 7. As documented in WUNU’s phase change request (*see* LMS File No. [0000081483](#)), the request to move from Phase 5 to Phase 7 was not UNC-TV’s idea; it was a function of the needs of other repacked stations that were connected to WUNU’s repack transition—as such, UNC-TV views WUNU’s phase change from 5 to 7 as having been involuntary and while it was not UNC-TV’s preferred plan, UNC-TV was ready, willing, and able to be a “good broadcast neighbor” to multiple other stations that were experiencing repack equipment challenges. At the time WUNU was working through the phase change situation, UNC-TV determined that it was premature for WUNU to request a further CP extension from the one that had already been granted in LMS File No. [0000074599](#), which was based on WUNU’s status as a then-Phase 5 station. Thus, UNC-TV left the March 4, 2020, CP extension in place and believed at that time that it was not unreasonable to do so.

From the beginning of UNC-TV’s repack plans, the licensee has consistently expressed that its “compound, complicated lodestar for this entire repack enterprise is timely completion of the repack with full compliance of all applicable state and federal regulation while—most importantly—keeping the station operating with as much coverage areas as possible with the least possible negative impact to viewers.” *See, e.g.*, LMS File No. [0000031476](#) (third quarter 2017 Transition Progress Report); *see also* WUNU’s Transition Progress Reports for Each Quarter Between Fourth Quarter 2017 and the Present. To avoid reiterating all of the bona fides in this application, the licensee hereby incorporates by reference all relevant references to its interim facility operations plans from Transition Progress Reports and Form 399 submissions.

The salient facts of the WUNU repack situation as of the date of this filing are as follows: The only work remaining to be accomplished to effectuate the construction of the final WUNU post-transition facility is the installation of the main antenna system (both the top-mount antenna and transmission line). The vendor performing these services will first complete its work at multiple other UNC-TV repack sites (WUNC-TV, WUNE-TV, and WUNG-TV, each of which is also filing a tolling waiver / second CP extension request). As of this filing, UNC-TV understands that the vendor will be arriving at WUNU’s site in mid-April 2020 and will need approximately five weeks to complete the final steps of WUNU’s final construction. Assuming no weather/climactic issues or other delays (e.g., delays at the other sites that create a cascading effect for the timing of arrival at WUNU’s site), UNC-TV anticipates that WUNU’s final post-transition

facility will be complete by late May 2020. **If UNC-TV had filed a superseding initial CP extension request for WUNU once WUNU changed from Phase 5 to Phase 7, the deadline for WUNU’s construction would now be July 15, 2020, instead of March 4, 2020. A deadline of July 15, 2020, would obviate the need for the instant tolling waiver / second CP extension request** because UNC-TV anticipates (based on the existing schedule) that WUNU’s repack construction will be complete before July 15, 2020. Thus, UNC-TV respectfully requests that WUNU’s construction permit be extended to July 15, 2020, in order to synchronize it with other Phase 7 stations that requested an initial CP extension of 180 days.

To the extent necessary, UNC-TV also seeks a tolling waiver for this situation.

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 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.”³

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.⁴ 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.⁵

¹ See 47 C.F.R. § 73.3700(b)(5).

² See 47 C.F.R. § 73.3700(b)(5)(i) (citing 47 C.F.R. § 73.3598(b)).

³ *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).

⁴ See *id.*

⁵ 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”).

B. Waiver Standard and Public Interest Considerations

Generally, the FCC may grant a waiver for “good cause shown.”⁶ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁷ 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.⁸ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁹

As demonstrated herein, good cause exists for waiver of Section 73.3598(b) in this particular circumstance. Among the reasons that support the Media Bureau taking action favorable to the applicant are as follows:

- WUNU timely terminated its pre-transition channel operations and has been operating on its post-transition channel using interim facilities since the end of Phase 7.
- Because WUNU’s timely transition has already occurred, no interference issues would be caused by a further extension of WUNU’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.
- The vendor for the final services required for WUNU’s post-transition primary antenna construction has advised that, as a result of its commitments to perform repack work for other UNC-TV stations, it is unavailable to perform the requisite services until the April/May 2020 time frame for WUNU to complete the repack facility. Because this vendor is the same vendor involved at other of UNC-TV’s repack station sites (by virtue of the state’s view that all of UNC-TV’s repack projects are one unitary project for contracting purposes), UNC-TV believes that the vendor’s schedule is reasonable under the circumstances.
- As a Phase 7 station, WUNU could have secured an initial 180-day CP extension when WUNU was involuntarily moved from Phase 5 to Phase 7 but opted not to do so because it believed at that time that completion of the project by March 4, 2020, was still feasible. Changing the CP extension now to July 15, 2020, would merely make WUNU’s extended CP deadline consistent with other Phase 7 stations that were granted CP extensions.

⁶ 47 C.F.R. § 1.3.

⁷ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁸ 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.

⁹ See *Northeast Cellular*, 897 F.2d at 1166.

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 similarly-situated repacked stations, (ii) would recognize that WUNU was a good broadcast neighbor when multiple other stations sought UNC-TV's cooperation in changing WUNU's transition phase deadline, (iii) took appropriate and timely action to ensure a timely transition by its involuntarily-assigned Phase 7 deadline, (iv) would demonstrate an understanding that the factors causing the further delay in completion of WUNU's final post-transition facility have been beyond the licensee's control, (iv) will not undermine or delay any post-Auction transition goals, and (v) does not require waiver of any interference regulations or policies. Because WUNU already successfully terminated its pre-transition channel operations in a timely fashion by the Phase 7 deadline (and successfully cut over to the interim antenna facility to effectuate the timely channel change), a second extension of WUNU's repack CP until July 15, 2020) will not negatively affect the nationwide transition. Accordingly, grant of this request is in the public interest.

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