

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

**A. Introduction and Background**

The University of North Carolina (the “licensee” or “applicant”), licensee of WUNK-TV, Greenville, North Carolina (Fac. ID No. 69149) (“WUNK-TV”), respectfully requests a further extension of time to complete construction of its full, authorized post-transition facilities, i.e., the facilities specified in WUNK-TV’s repack construction permit (“CP”) issued in LMS File No. [0000025767](#). WUNK-TV was granted an initial extension of its repack CP in LMS File No. [0000074595](#), such that the repack CP is now scheduled to expire on March 4, 2020.

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 regulations 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. [0000031470](#) (third quarter 2017 Transition Progress Report); *see also* WUNK-TV’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. In short, the principal reason that affected the licensee’s ability to fully construct the full, final WUNK-TV post-transition facility by the CP’s original Phase 5 deadline was the combination of (i) the state-imposed governing procurement requirements and (ii) the need to continue to continually serve as much of the viewing audience as possible while replacing the station’s top-mount antenna in a timely fashion. Thus, the licensee has been using interim facilities to meet the Phase 5 transition deadline and has been planning to complete its final transition several months after the Phase 5 deadline. These plans are in respect of the law, practical vendor capabilities, and—most importantly—the need and desire of viewers to have uninterrupted service to the station’s noncommercial programming throughout the mandatory transition.

Fast forward from the station’s Phase 5 deadline in September 2019, and the schedule now calls for relevant vendors to arrive at WUNK-TV’s site at the beginning of July 2020 and to complete the rest of the repack construction work (namely the completion of the final top-mount primary antenna system, including both the post-transition antenna and new transmission line), subject—of course—to weather and climactic conditions, by the end of July 2020. For that reason, UNC-TV believes that an additional 180 days of time to extend the station’s repack CP would be appropriate and would build in sufficient “cushion” to handle any weather-related or other issues that might arise and cause unscheduled delays (including delays in the tower crew’s arrival at WUNK-TV’s site while the tower crew is completing other of UNC-TV’s repack projects). To be clear, the circumstances behind the delay in the installation of the final main antenna are related to vendor availability and are beyond the control of the licensee. More specifically, the same crew that is slated to complete WUNJ-TV’s repack facility by the end of June 2020 (UNC-TV has separately filed a tolling waiver request / second CP extension request for WUNJ-TV too) will be working on the completion of construction for WUNK-TV’s repack project. Thus, if the crew finishes its WUNJ-TV work ahead of schedule (i.e., before the end of June 2020), then it may be able to start the final steps of WUNK-TV’s repack construction sooner than anticipated and could complete the project ahead of schedule. On the other

hand, if the tower crew is delayed at WUNJ-TV (or at another UNC-TV repack project site prior to commencing the WUNJ-TV work), then the crew may complete its WUNK-TV work later than anticipated.

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.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.<sup>2</sup> 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."<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup>

## **B. Waiver Standard and Public Interest Considerations**

Generally, the FCC may grant a waiver for "good cause shown."<sup>6</sup> A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>7</sup> In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective

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<sup>1</sup> See 47 C.F.R. § 73.3700(b)(5).

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

<sup>3</sup> *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).

<sup>4</sup> See *id.*

<sup>5</sup> 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").

<sup>6</sup> 47 C.F.R. § 1.3.

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

implementation of overall policy on an individual basis.<sup>8</sup> Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>9</sup>

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:

- WUNK-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 5, which is the phase to which the station was originally assigned.
- Because WUNK-TV's timely transition has already occurred, no interference issues would be caused by a further extension of WUNK-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.
- The vendor for the final services required for WUNK-TV's post-transition primary antenna and transmission line installation will not be available to perform the requisite services until after it completes its repack work in June 2020 for UNC-TV's station WUNJ-TV. 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.

### 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 WUNK-TV took appropriate and timely action to ensure a timely transition by its assigned Phase 5 deadline, (iii) would demonstrate an understanding that the factors causing the further delay in completion of WUNK-TV'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 WUNK-TV already successfully terminated its pre-transition channel operations in a timely fashion by the Phase 5 deadline (and successfully cut over to the interim antenna facility to effectuate the timely channel change), a second extension of WUNK-TV's repack CP for 180 days (i.e., until August 31, 2020) will not negatively affect the nationwide transition. Accordingly, grant of this request is in the public interest.

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<sup>8</sup> 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.

<sup>9</sup> See *Northeast Cellular*, 897 F.2d at 1166.