

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

A. Introduction and Background

The University of North Carolina (the “licensee” or “applicant”), licensee of WUNE-TV, Linville, North Carolina (Fac. ID No. 69114) (“WUNE-TV”), respectfully requests a further extension of time to complete construction of its full, authorized post-transition facilities, i.e., the facilities specified in WUNE-TV’s repack construction permit (“CP”) issued in LMS File No. [0000025396](#) and subsequently expanded in LMS File No. [0000034440](#). WUNE-TV was granted an initial extension of its repack CP in LMS File No. [0000074592](#), 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. [0000031459](#) (third quarter 2017 Transition Progress Report); *see also* WUNE-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 WUNE-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 UNC-TV had been in a position where it believed that the final steps for construction of the post-transition facility (namely the installation of the final post-transition main antenna using a helicopter¹) would be complete in late January 2020, i.e., prior to the March 4, 2020, CP extension deadline. Unfortunately, site coordination and staging issues for the helicopter have made it impossible to meet the March 4 deadline, and the vendor is currently scheduled to arrive in mid-March 2020 to perform the work, subject—of course—to weather and climactic conditions. Once the final post-transition main antenna is set at the top of the tower, UNC-TV believes that the project can be

¹ More specifically, the tower is a 400-foot self-supporting structure located on the top of Grandmother Mountain, and any reasonable antenna removal and installation plan for the top-mount primary antenna warrants the use of a helicopter for safety, feasibility, and efficiency purposes.

completed within a couple of weeks' time.² For that reason, UNC-TV believes that an additional sixty (60) days of time to extend the station's repack CP would be appropriate and would build in sufficient "cushion" to handle any weather-related issues that might arise and cause unscheduled delays. In short, the circumstances behind the delay in the installation of the final main antenna are beyond the control of the licensee, and the revised plans for the installation suggest that only a relatively brief amount of additional time is necessary to complete the project.

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.³ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.⁴ 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."⁵

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.⁶ 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.⁷

² In addition to the top-mount antenna changeout, custom-length transmission line segments will need to be measured for fabrication by a vendor (and delivery and installation) in order to complete the project. Measurements for the custom-length segments cannot be made until the new antenna has been installed.

³ See 47 C.F.R. § 73.3700(b)(5).

⁴ See 47 C.F.R. § 73.3700(b)(5)(i) (citing 47 C.F.R. § 73.3598(b)).

⁵ *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).

⁶ See *id.*

⁷ 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.”⁸ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁹ 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.¹⁰ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹¹

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:

- WUNE-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 WUNE-TV’s timely transition has already occurred, no interference issues would be caused by a further extension of WUNE-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 safest and most practical and efficient way in which to effectuate the installation of WUNE-TV’s final post-transition primary antenna is to use a helicopter pick and lift. Accordingly, the schedule for this critical work called for it to be performed at the end of January 2020. As a result of coordination and staging issues relating to the helicopter services, the schedule for the helicopter work has necessarily been changed to mid-March 2020.
- After installation of the new top-mount post-transition main antenna, UNC-TV anticipates that construction of the project will be totally complete within a couple of weeks of time and is requesting a modest 60 additional days beyond March 4 by which to complete WUNE-TV’s repack project.

C. Conclusion

In sum, grant of this Section 73.3598(b) waiver request (i) would be consistent with other

⁸ 47 C.F.R. § 1.3.

⁹ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ 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.

¹¹ See *Northeast Cellular*, 897 F.2d at 1166.

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actions already taken by the Media Bureau for similarly-situated repacked stations, (ii) would recognize that WUNE-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 WUNE-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 WUNE-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 WUNE-TV's repack CP for 60 days (i.e., until May 4, 2020¹²) will not negatively affect the nationwide transition. Accordingly, grant of this request is in the public interest.

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¹² Technically, a 60-day extension would put the expiration date on May 3. Because May 3, 2020, is a Sunday, UNC-TV respectfully requests Monday, May 4, 2020, as the new extended deadline for completion of construction.