

Justification

CNZ Communications SE, LLC (“CNZ”), licensee of television station WLGA(TV), Opelika, GA (Fac. ID 11113) hereby requests a further waiver of the tolling provisions contained in Section 73.3598 of the Commission’s Rules to provide it with an additional six months to complete construction of its post-auction distributed transmission system (“DTS”). As set forth herein, CNZ has been unable to construct the second transmission site of its DTS due to “rare and exceptional” circumstances beyond its control.

I. Background

WLGA is one of 50 stations that the FCC predicted would receive more than one percent new interference on their post-transition channels.¹ The bulk of the new interference to WLGA comes from adjacent-channel Station WUVG, which is moved to Channel 18 in Atlanta, GA.² The adjacent-channel interference from WUVG to WLGA is predicted to occur in the northeast region of the WLGA service area, where there is terrain blockage of the WLGA signal by an intervening ridge line. Because of the ridge line, increasing power at WLGA’s pre-auction transmitter site would not be sufficient to overcome the signal level losses and the resulting interference from WUVG. Consequently, to recoup service to the population lost in the repack, CNZ elected to install a DTS network, placing an additional transmitter near the top of the ridge line to provide service to the northeastern sector of its service area.³

On May 14, 2018, the FCC granted CNZ’s application for the DTS CP, which will allow WLGA to recapture population lost as a result of the post-auction repack through the use of a two-site DTS. Since the grant of the DTS CP, CNZ has undertaken extensive efforts to refine the engineering for the DTS, select and specify the equipment for the DTS, and obtain an allocation from the TV Broadcaster Repack Fund. Many of these efforts took longer than expected. For instance, due to limitations in the FCC’s Licensing and Management System, CNZ had to manually input the equipment selection and quotes for the WLGA DTS transmission facilities.

Upon determining that it would be unable to complete construction of the full WLGA DTS by the Phase 1 completion date (November 30, 2018), CNZ developed a plan to bifurcate the construction process and timely transition to its post-auction channel from its existing site (which will serve as DTS site #1) by November 30, 2018 before later adding DTS site #2. On November 5, 2018, CNZ described its plans in an application for an extension of the DTS CP, File No. 63323, and on November 19, 2018, CNZ filed an Engineering STA for authorization to operate from DTS site #1 while it completes construction of DTS site #2, File No. 63640. The FCC timely granted both applications with expiration dates of May 29, 2019 and WLGA transitioned from its pre-

¹ See *Incentive Auction Closing & Channel Reassignment Pub. Notice the Broad. Television Incentive Auction Closes; Reverse Auction & Forward Auction Results Announced; Final Television Band Channel Assignments Announced; Post-Auction Deadlines Announced*, Public Notice, 32 FCC Rcd. 2786 (2017); http://data.fcc.gov/download/incentive-auctions/Transition_Files/Pop_Loss_Indicator.csv.

² FCC File BLANK0000029625, (“WUVG-CP”)

³ See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auction, Report & Order*, 29 FCC Rcd. 6567 ¶ 175 (2014) (stating that a licensee may use DTS to “provide service to a specific area that had service on its pre-auction channel but lacks service on its new channel.”)

auction channel (RF channel 30) to its post-auction channel (RF channel 17) from DTS site #1 prior to the Phase 1 completion date.

CNZ subsequently submitted two requests for tolling of the CP and the STA to accommodate the need to finalize the design of its DTS, complete tower reinforcements at the DTS #2 site to accommodate WLGA's antenna and identify and clear space within the transmitter building for the installation of new equipment. *See* File Nos. 72815 (first tolling request), 72814 (May 2019 STA), 87687 (second tolling request), and 86788 (October 2019 STA). Those efforts are now complete, and CNZ is actively working to complete construction of the DTS #2 site. While CNZ has worked diligently to complete construction by May 20, 2020, delays relating to the COVID-19 pandemic have made it increasingly unlikely that the DTS #2 site will be ready by that date.

II. The Commission Should Toll the DTS CP

Under the present circumstances, tolling of the DTS CP is justified. In its Public Notice adopting the post-Incentive Auction transition scheduling plan, the Media Bureau and the Incentive Auction Task Force declared that “[r]eassigned stations and band changing stations that are unable to complete construction of their post-auction channel facilities by their deadlines may seek a single extension of up to 180 days.”⁴ All subsequent requests for additional time to construct are subject to the Commission’s tolling provisions of Section 73.3598(b) of the Rules.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 still toll the expiration of the Station’s construction permit where the station can demonstrate that “rare and exceptional circumstances” prevented construction.⁷

Tolling is appropriate here because CNZ’s inability to complete construction of both transmission sites for its post-Incentive Auction channel facilities is due to rare and exceptional circumstances beyond its control. In the ordinary course, the Commission provides licensees with three years from the date of issuance of the original construction permit to complete construction.⁸ In declining to provide all broadcasters with 36 month construction periods to construct their post-Incentive Auction facilities, the FCC determined that “some stations will have to make only modest changes to their facilities in order to transition to new channels.”⁹ At the same

⁴ *Incentive Auction Task Force & Media Bureau Adopt A Post-Incentive Auction Transition Scheduling Plan*, Public Notice, 32 FCC Rcd. 890 ¶ 40 (MB & IATF 2017); 47 CFR § 73.3700(b)(5).

⁵ 47 C.F.R. § 73.3598(b).

⁶ *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.”

⁸ 47 C.F.R. § 73.3598(a).

⁹ *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567 § 570 (2014).

time, the Commission recognized that “some stations will face significant challenges in completing the post-auction transition to their new facilities” and committed to “work diligently with stations to ensure that service disruptions are minimized to the fullest extent possible through the use of a variety of mechanisms.”¹⁰ WLGA falls into this latter category.

In granting CNZ’s most recent tolling request, the Video Division recognized that “unusual construction delays caused by the Station’s construction of a DTS network have contributed to the Station not being able to complete construction by its construction permit deadline.”¹¹ However, as the Video Division recognized, “CNZ’s waiver and tolling request is not likely to delay the overall transition schedule and will not cause interference to other stations” because the Station has already transitioned to its pre-auction channel from DTS site #1.

The same rare and exceptional circumstances that justified the prior tolling of WLGA’s CP remain true today. However, the challenges in completing construction of the DTS are compounded by the COVID-19 pandemic, which the Commission has recognized is causing construction and delivery delays outside of a station’s control.¹² Although CNZ will continue working to complete construction of the DTS #2 facility as soon as possible, an additional six month tolling of WLGA’s CP is necessary in these unpredictable circumstances and will allow CNZ to complete construction in a manner that is safe for its employees and contractors.

In short, the public interest will be served by grant of waiver and tolling of WLGA’s construction permit.

III. Conclusion

For the foregoing reasons, the Commission should grant CNZ’s request for waiver of the Commission’s tolling provisions and toll WLGA’s DTS CP for at least an additional 180 days.

¹⁰ *Id.* ¶ 569.

¹¹ See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau, to CNZ Communications SE, LLC (Jan. 28, 2020).

¹² See *Guidance for Stations in Phase 9 of the Post-Incentive Auction Transition As a Result of the Novel Coronavirus (COVID-19) Pandemic*, MB Dkt. No. 16-306, GN Dkt. No. 12-268, DA 20-282 (rel. Mar. 17, 2020).