



Federal Communications Commission
Washington, D.C. 20554

April 21, 2020

Deerfield Media (Cincinnati) Licensee, LLC
Deerfield Media (Mobile) Licensee, LLC
1776 Park Ave 4-135
Park City, UT 84060

Re: Requests for Tolling Waiver
WSTR-TV, Cincinnati, OH and WJTC,
Pensacola, FL
Facility ID No. 11204 and 41210
LMS File Nos. 0000112183 and
0000112207

Dear Licensee,

On April 13, 2020, Deerfield Media (Cincinnati) Licensee, LLC, licensee of Station WSTR-TV, Cincinnati, Ohio (WSTR) and Deerfield Media (Mobile) Licensee, LLC, licensee of Station WJTC(TV), Pensacola, Florida (collectively Deerfield and Stations) filed the above-referenced requests for waiver of the Commission's tolling provisions and tolling of the Stations' construction permit expiration dates. For the reasons below, we grant Deerfield's requests and toll the expiration date of the Stations' construction permit through October 13, 2020.¹

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

¹ Because the date that Deerfield requested for its extended expiration date, October 12, 2020, falls on the Columbus Day holiday, we will extend the construction permit to the next business day, which would be Tuesday, October 13, 2020. *See* 47 CFR 1.4.

² *See* 47 CFR § 73.3700(b)(5).

³ *See* 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

⁴ *Id.*

demonstrate that “rare and exceptional circumstances” prevented construction by the station’s construction permit expiration date.⁵

Deerfield requests waivers of the tolling rule and tolling of the Stations’ construction permits for their post-incentive auction channel facilities through October 13, 2020. The Stations are currently operating on their post-auction channels with temporary facilities.⁶ The Stations were each granted a construction permit extension and their permits currently expire April 15, 2020.⁷

Deerfield states that it has made significant progress in constructing the Stations’ post-auction channel facilities; however, the WSTR permanent transmitter and WJTC permanent top mount antenna and transmitter have not been installed. Deerfield states that these delays are a result of tower and transmitter crew delays. Deerfield adds that delays have also occurred because of the difficulty of the Stations’ engineers, tower crew and transmitter crews to travel as a result of the COVID-19 pandemic.⁸

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 Stations’ construction permits to October 13, 2020. We find that Deerfield was unable to complete construction of its post-auction channel facilities due construction delays. We also find that grant of Deerfield’s waiver and tolling requests are not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Stations have already ceased operation on their pre-auction channels and initiated temporary operations on their post-auction channels. To the extent some viewers are unable to receive the Stations’ signals while they operate using interim facilities, we believe that Deerfield has every incentive to ensure viewers are fully informed about the Stations’ transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Stations’ construction permits.

We remind Deerfield that pursuant to the Spectrum Act, the Stations are 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.”⁹ Additional expenses

⁵ 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).

⁶ See LMS File Nos. 0000112181 and 00000112206. WSTR was repacked from channel 33 to channel 18 and WJTC was repacked from channel 45 to 35.

⁷ See LMS File Nos. 0000086548 and 0000093632. We do not consider a construction permit to have expired during the pendency of a tolling or extension request filed prior to a station’s construction permit expiration date. Nevertheless, we encourage licensees to file requests as soon as practical or as otherwise required by the Commission’s tolling rule.

⁸ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁹ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) (“The appropriate scope of ‘costs reasonably incurred’ necessarily will have to be decided on a case-by-case basis.”).

incurred, such as expenses resulting from changes in a station's transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Deerfield Media (Cincinnati) Licensee, LLC and Deerfield Media (Mobile) Licensee, LLC's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000034777 and 0000093632, respectively) for WSTR-TV, Cincinnati, Ohio and WJTC(TV), Pensacola, Florida **ARE TOLLED to October 13, 2020**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind Deerfield that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail):
Paul A. Cicelski, Esq.
Scott R. Flick, Esq.

¹⁰ See 47 CFR § 73.3598(b).