



Federal Communications Commission
Washington, D.C. 20554

April 27, 2020

Woods Communications Corporation
David Woods
1 WCOV Avenue
Montgomery, AL 36111
david@wcov.com

Re: Request for Tolling Waiver
WCOV-TV, Montgomery, AL
Facility ID No. 73642
LMS File No. 0000112630

Dear Licensee,

On April 23, 2020, Woods Communications Corporation (WCC), licensee of Station WCOV-TV, Montgomery, Alabama (WCOV or Station), filed the above-referenced request for waiver of the Commission's tolling provisions, and reinstatement and tolling of the Station's construction permit expiration date. For the reasons below, we grant WCC's request, reinstate and toll the expiration date of WCOV's construction permit 180 days through September 8, 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 demonstrate that "rare and exceptional circumstances" prevented construction by the station's construction permit expiration date.⁵

¹ Because the date for the extended expiration date, September 5, 2020, falls on Saturday, we will extend the construction permit to the next business day, which would be Tuesday, September 8, 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.*

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).

WCC requests waiver of the tolling rule and reinstatement and tolling of its construction permit for its post-incentive auction channel facilities through September 8, 2020. WCOV was granted an extension of its construction permit with an expiration date of March 9, 2020.⁶ WCOV ceased operations on its pre-auction channel and is operating an interim facility while it completes construction of its post-auction channel facilities.⁷

WCC states that the Station's tower company has completed installation of the transmission line and new antenna; however, a subsequent antenna test failed. WCC states that further inspection and correction is subject to delay because of the COVID-19 pandemic.⁸ Accordingly, WCC requests that the Commission waive its tolling rule, reinstate and toll WCOV's construction permit expiration date to September 8, 2020.

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 reinstate and toll the expiration date of the Station's construction permit. WCC has demonstrated it will be unable to complete construction of its post-auction channel facilities due to delays fixing the Station's post-auction antenna as a result of the COVID-19 pandemic. We also find that grant of WCC's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WCOV has already ceased operation on its pre-auction channel and is operating an interim facility on its post-auction channel. To the extent some viewers are unable to receive WCOV's signal while it operates its interim facilities, we believe that WLL has every incentive to ensure viewers are fully informed about the Station's transition plan. Ultimately, we conclude that the public interest will be served by reinstatement of the Station's construction permit and grant of waiver and tolling of the Station's construction permit.

We remind WCC that pursuant to the Spectrum Act, the Station is 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 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, Woods Communications Corporation's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000078710) for WCOV-TV, Montgomery, Alabama **IS REINSTATED AND TOLLED to September 8, 2020**. Grant of this tolling waiver does not permit WCOV to recommence operation on its pre-auction channel.

⁶ LMS File No. 0000078707. WCOV was repacked from channel 20 to channel 22.

⁷ LMS File No. 0000101790.

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.").

We also remind WCC 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): Aaron Shainis, Esq.

¹⁰ See 47 § CFR 73.3598(b).