

## **REQUEST FOR FURTHER WAIVER OF TOLLING OF CONSTRUCTION PERMIT**

Entravision Holdings, LLC (“Entravision”), the licensee of Station WUTF-TV, Worcester, Massachusetts (Facility ID No. 30577 (“the Station” or “WUTF”), hereby respectfully requests a further extension of time, in the form of a further tolling waiver, in which to complete construction of the post-auction channel facilities for WUTF. Entravision requests that its construction permit for the Station be extended to an expected completion date of July 15, 2020.

The Commission has indicated that certain circumstances would justify the grant of a construction permit extension. *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6567, 6804-6805 (2014). Section 73.3700(b)(5) sets out a series of causes for a licensee to ask for an initial and further extension of its construction permit.

Entravision had fully expected to meet the initial Phase 4 completion date of August 2, 2019 for the Station. The Station is one of a number of users of a multi-user tower in Needham Heights, Massachusetts, which is owned by American Tower Corporation (“ATC”). In addition to its ownership of the Needham Heights tower, ATC is undertaking the construction of the modifications to the tower that will accommodate the post-repack facilities of the Boston area television stations operating from that tower.

In LMS No. 0000079850, Entravision requested an extension of its construction permit as a result of the problems that ATC was having with its contractors handling the work on the Needham Heights tower. In her letter, dated September 10, 2019, the Chief of the Video Division granted Entravision a 180-day extension of its construction permit, which expires on January 29, 2020.

Entravision had been hopeful that ATC could complete its work within the 180-day period. However, ATC throughout the construction process, and continuing up to this day, has reported to its tenants a series of weather, contractor, and other delays that have hindered the timely completion of the work. Likewise, the COVID-19 pandemic has caused problems for all parties, though construction work has continued.

In that the post-transition work was not be completed until the six-month extension had been exhausted, Entravision requested, in LMS No. 0000099597, a further extension of the construction permit, in the form of a tolling waiver, pursuant to Sections 73.3700(b)(i) and 73.3598 of the Commission's Rules.<sup>1</sup> The tolling waiver and extension of construction permit was granted on January 25, 2020.

Entravision has been advised that the work will not be completed in order to meet the current May 29, 2020 construction deadline. ATC's advice to Entravision is that the work is expected to be finished by middle of June, 2020. In order to accommodate that prediction and additional work and time may be needed beyond that date, Entravision is asking for a further extension of the construction permit, though a tolling waiver, until July 1, 2020.

An extension of a post-auction construction permit, beyond six months, requires the application of the tolling provisions of Section 73.3598 of the Commission's Rules. In speaking to how the tolling provisions would operate, the Commission provided that it would consider whether "additional time to construct is required after the conclusion of the initial

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<sup>1</sup> Entravision also requested a waiver of Section 73.3700(b)(iv) of the Commission's Rules in that this request is being submitted within 90 days of the termination of the extension of its construction permit. Entravision is not in charge of the construction work as it is a user of a multi-user tower and construction is being directed by ATC and not Entravision. Entravision has sought to complete the work on a timely basis but has been frustrated by the failure of the contractor unilaterally selected by ATC. Entravision requests a similar waiver in this instance.

six-month extension period...” *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Rcd 6806 n. 1644 (2014). Entravision submits that another extension is required for WUTF and the necessary basis exists for a further waiver of the tolling requirements customarily expected of a permittee.

As Entravision noted in its prior tolling waiver request, the Needham Heights tower is the principal communications tower for Boston area television stations. There has never been any question that it would not continue as the tower of choice in the post-auction period. However, neither Entravision nor any other broadcast station tenant of that tower has control over the tower or work being undertaken. Not only is the tower owned by a third party, but that third party is directing the work necessary for post-auction operations. Thus, Entravision is subject to the actions of ATC and the contractors ATC has chosen to do the work for it. Likewise, the work during the current tolling period has been undertaken in New England, where winter and spring weather can be problematic, including such events as the recent May snow storm, and where the COVID-19 pandemic is especially virulent.

In this case, arising from problems faced by the current and removed contractor, Entravision remains unable to operate its post-auction facilities, as authorized, until ATC’s contractor completes its work. Based on the tower owner’s information, the expected completion date is in June and Entravision has added another month in order to accommodate unexpected delays and post-construction testing.

While it would have been best for Entravision to be the tower owner and control the construction process, it is not possible to do so in a major market such as Boston. Consequently, Entravision, like other television stations in the DMA that utilize the Needham

Heights tower, must accept the work undertaken by ATC and its selected contractors and do its best to encourage prompt construction.

Section 73.3598, the Commission’s tolling provision, sets out a series of requirements in order to toll a construction permit. In the absence of facts that support Section 73.3598 tolling, a waiver of that provision is required, premised on the existence of “rare and exceptional circumstances” warranting such relief. *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, 14 FCC Rcd 17525, 17542 (1999).

The Media Bureau has considered and granted a tolling waiver in situations similar to the one presented herein. In *Letter to Christian Television of Palm Beach County, Inc.* (Video Vision, October 2, 2019), the petitioner reported that its tower crew could not meet the construction schedule and it could not hire any replacement crews. As a result, the licensee urged that a waiver was necessary and proper because of a construction situation that was out of the licensee’s control. The Video Division agreed that the facts presented were “outside of [the licensee’s] control” and that the granting of a waiver “is not likely to negatively impact the overall transition schedule and will not cause interference to other stations.” As a result, the Video Division concluded that “the public interest will be served by grant of a waiver and tolling of the Station’s construction permit.” *See also Letter to The School Board of Miami – Dade County, FL* (Video Division, October 2, 2019).

In *Public Notice*, DA 19-1246, released December 9, 2019, the Commission’s Media Bureau and Incentive Auction Task Force spoke to the status of the repack process. The parties advised (at Para. 16) that their Transition Scheduling Plan “includes flexibility to

work with individual stations that face unforeseen challenges on a case-by-case basis and to adjust requirements in a manner that does not negatively impact the overall schedule (footnote omitted).” Entravision submits that the situation presented herein is unforeseen, clearly not of Entravision’s choosing or desire, beyond its control, and not likely to impede the completion of the repack process or cause material harm to viewers, thereby providing the public interest basis for a waiver of the Commission’s rules. *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972)

Considering that, despite Entravision’s diligent efforts to complete construction during the construction period and owing to factors well beyond its reasonable control, including the impact of the COVID-19 pandemic, the Station is unable to meet its required and extended deadlines, Entravision submits that there exists a basis to waive the tolling provisions of Section 73.3598 and allow additional time for the completion of the necessary work while WUTF-TV operates with the interim facilities described in its STA.

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