

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

A. Introduction and Background

The University of North Carolina (the “licensee” or “applicant”), licensee of WUNP-TV, Roanoke Rapids, North Carolina (Fac. ID No. 69397) (“WUNP-TV”), respectfully requests a further extension of time to complete construction of its full, authorized post-transition facilities, i.e., the facilities specified in WUNP-TV’s repack construction permit (“CP”) issued in LMS File No. [0000025919](#) and modified in LMS File No. [0000034416](#). WUNP-TV was granted an initial extension of its repack CP in LMS File No. [0000074598](#), and subsequently granted a tolling waiver in LMS File No. [0000107047](#) (“Initial Tolling Waiver”) such that the repack CP is now scheduled to expire July 7, 2020. To be clear, WUNP-TV has been operating on its post-transition channel since the Phase 5 deadline using an interim facility. That interim facility is the licensed auxiliary facility for WUNP-TV (LMS File No. [0000081303](#)).

In addition to all of the facts and factors set forth in WUNP-TV’s Initial Tolling Waiver, which we will not reiterate here, the licensee is now facing COVID-19 circumstances that have derailed both (i) the construction plans and (ii) WUNP-TV’s prior optimism about the timing of the completion of its repack project. In short, there is almost no chance that WUNP-TV’s repack project will be complete by July 7, 2020, and, as discussed below, the licensee can offer cautious optimism—but not certainty—for its prediction when the project will be completed.

As set forth in WUNP-TV’s first quarter 2020 Transition Plan Progress Report (filed April 8, 2020, in LMS File No. [0000111826](#)), the principal work remaining for WUNP-TV’s repack project relates to

the main antenna system, which is the most significant work remaining to be done on the project. This tower work includes (a) the removal of the existing main antenna (which cannot be retuned to WUNP-TV’s post-transition channel) and (b) the installation of the permanent post-transition main antenna system in the same location. This work was rescheduled to be completed in early June 2020. The situation with the COVID-19 pandemic has disrupted that construction timeline and has brought the antenna system work necessary to complete the WUNP-TV Repack Transition project substantially to a halt. More specifically, the antenna system contractor, RFS, had sub-contracted the antenna installation portion of the project to GTI – America, a Canadian-based company. In mid-March 2020, GTI – America instructed their tower crews working in the United States to return to Canada. GTI – America’s crews departed the UNC-TV sites shortly after receiving those instructions. With the U.S. – Canadian border currently closed, it is unclear when the antenna installation work for WUNP-TV will be rescheduled; indeed, it is currently impossible to forecast a rescheduling of the work because the reopening of the U.S. – Canadian border is necessary before the tower crews can return to work in the United States. Rather than sit completely still, however, UNC-TV has been involved in conversations with RFS to explore other options that might allow for the antenna removal/installation portion of project to move forward sooner than the unknown

date for the reopening of the border, but at this time those options haven't been worked out.¹

Fast-forward two months (since the filing of the WUNP-TV first quarter Transition Plan Progress Report), and there have been superseding developments that have redounded to the benefit of the WUNP-TV repack project. Indeed, even though the U.S. – Canadian border has not yet re-opened, GTI – America has been able to successfully re-deploy Canadian-based tower crew personnel into the United States, and, as a result, it appears that it is within the realm of possibility that WUNP-TV's repack project could be complete as soon as late July 2020 (i.e., within a few weeks of the current expiration date for the repack CP). That said, however, the crew is not yet onsite for WUNP-TV and will not be onsite until they complete their work at another of UNC-TV's repack sites (WUNC-TV, Chapel Hill, NC) which itself has already been further delayed.² In addition, weather at the WUNP-TV site could become an issue as the Roanoke Rapids area is often affected by Atlantic hurricanes that hit the North Carolina coast, and the final construction will occur during the Atlantic Hurricane Season. Because we only requested an additional 125 days in WUNP-TV's initial Tolling Waiver request (which seemed eminently reasonable at the time) and now find ourselves requesting more time as a result of an unanticipated situation caused by circumstances beyond the applicant's control, we are now requesting an additional 180 days (i.e., through January 4, 2021³) in order to preemptively guard against uncontrollable contingencies such as (but not limited to) delays in the arrival of the tower crew, unfavorable weather, a second wave of COVID-19, and other unforeseen circumstances.

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.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 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."⁶

¹ WUNP-TV First Quarter 2020 Transition Plan Progress Report, LMS File No. [0000111826](#) (filed April 8, 2020), Narrative Exhibit at pp.1–2.

² The tower crew arrived at WUNC-TV's repack site during the first week of June, but the helicopter pick/lift to complete WUNC-TV's final antenna installation that was scheduled for the week of June 15 has been delayed by at least a week. In turn, that means that we can expect the tower crew to arrive at WUNP-TV's site later than anticipated.

³ A 180-day extension would end on January 3, 2021; because January 3 is a Sunday, we are requesting January 4, 2021, be substituted as the deadline instead.

⁴ See 47 C.F.R. § 73.3700(b)(5).

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

⁶ *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).

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.⁷ 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.⁸

B. Waiver Standard and Public Interest Considerations

Generally, the FCC may grant a waiver for "good cause shown."⁹ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.¹⁰ 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.¹¹ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹²

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:

- WUNP-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.

⁷ See *id.* The COVID-19-related circumstances that have contributed significantly to the need for the instant application likely qualify—by themselves—as an "act of God" under the Commission's tolling rule in any event. Nonetheless, this tolling waiver request is the appropriate posture from which to make this request for more time to construct because the applicant was previously granted a tolling waiver, which related to transition-related circumstances wholly unrelated to COVID-19.

⁸ 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").

⁹ 47 C.F.R. § 1.3.

¹⁰ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹ 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.

¹² See *Northeast Cellular*, 897 F.2d at 1166.

- Because WUNP-TV's timely transition has already occurred, no interference issues would be caused by a further extension of WUNP-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 vendor for the final services required for WUNP-TV's post-transition primary antenna construction became unavailable on the original schedule as a result of the global COVID-19 pandemic.
- The vendor for the final services required for WUNP-TV's post-transition primary antenna construction will be providing services to another repacked UNC-TV station prior to becoming available for the final work at WUNP-TV's site and is obligated to complete the work at the other site before moving to the WUNP-TV site.
- WUNP-TV's repack construction is essentially complete other than the final antenna system work that is now scheduled to (hopefully) be complete as soon as late July 2020, which—if it comes to fruition—will be within just a few weeks from the current CP expiration date.

C. Conclusion

In sum, grant of this Section 73.3598(b) waiver request (i) would be consistent with other actions already taken by the Media Bureau for similarly-situated repacked stations, (ii) would recognize that WUNP-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—especially the effects of the global COVID-19 pandemic—causing the further delay in completion of WUNP-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 WUNP-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 further extension of WUNP-TV's repack CP for 180 days (i.e., until January 4, 2021) will not negatively affect the nationwide transition. Accordingly, grant of this request is in the public interest.

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