

Justification for Tolling

Local Media TV Chicago, LLC (“LMTVC”), licensee of Class A Television Station W40CN-D, Sugar Grove, Illinois (Fac. ID 71111) (“Station”), hereby submits a second request for tolling of the construction permit for its permanent post-Incentive Auction facilities for a period of 180 days to allow the Station time to complete construction of the Station’s post-Incentive Auction facilities.

In the Closing and Channel Reassignment Public Notice, the Commission assigned the Station to Phase 8 of the post-Incentive Auction transition. Subsequently, the Station, in coordination with three other stations, requested to move to Phase 6. However, despite assurances from the site owner that it would be able to complete its final facility by the Phase 6 deadline, the Station has encountered repeated delays stemming from the tower site’s requirement to use an exclusive installer crew. LMTVC was granted one 6-month extension of its CP (File No. 0000080109). Subsequently, LMTVC requested tolling of the CP for an additional six-month term, which will expire on October 13, 2020 (File No. 0000110239). In its tolling request, it explained:

LMTVC has diligently worked to construct its facility since April 2019. It ordered all necessary equipment last summer and actively worked with the building owner and manager to complete all needed studies and drawings. However, this site uses an exclusive installer crew. LMTVC has been unable to complete construction of the physical facility because the crew is significantly delayed on other jobs. Recently, LMTVC was notified that the crew now has stopped all work because of concerns with the spread of the coronavirus.

Based on these repeated delays, LMTVC sought out alternate sites and applied in February 2020 to move the station to one such site. However, because this move would require a waiver of the 30-mile rule, FCC staff advised it would not grant permission to relocate the station. Therefore, LMTVC is continuing to work with the site manager and crew to construct at its authorized location.

The crew has been delayed repeatedly, first because of complications building out the facilities of other stations, and most recently by a forced shutdown of all onsite work relating to the spread of the coronavirus. Because of the uncertainty surrounding the spread of the coronavirus and the length of time that all work may be stopped onsite, LMTVC is requesting that its CP be tolled for the full 180-day period. Grant of the instant request will not negatively impact the overall transition schedule and will not cause interference to other stations because the Station has ceased operations on its pre-auction channel.

In granting LMTV’s initial tolling request, the Commission determined that “sufficient circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station’s construction permit. LMTVC has demonstrated it will be unable to complete construction of its post-auction channel facilities due to construction delays, including those resulting from the COVID-19 pandemic. We also find that grant of LMTVC’s waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. W40CN has already ceased operation on its pre-auction channel and is silent. To the extent some viewers are unable to receive W40CN’s signal through alternative means while it is silent, we believe that LMTVC 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 grant of waiver and tolling of the Station's construction permit."¹

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."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 still toll the expiration of the Station's construction permit where the station can demonstrate that "rare and exceptional circumstances" prevented construction.⁵

Here good cause exists to waive Section 73.3598(b) of the Rules. The Media Bureau has recognized, in the context of the post-Incentive Auction transition, that waiver of the tolling provisions is appropriate where: (1) a station was unable to complete construction of its post-auction facilities due to circumstances that were outside of its control, and (2) the tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. As the Bureau recognized in granting LMTVC's initial request for tolling, LMTVC's inability to complete construction of the Stations' permanent facilities is due to circumstances beyond its control. While the Station continues to work diligently toward completion of its final post-auction facility by October 13, 2020, recent developments have raised concerns about meeting that deadline.

Because of ongoing delays with its original site, on August 4, 2020, the Station applied for and was granted authorization to move to a different site where it can share an antenna that is already installed and operational.⁶ The station was on track to resume operations by the CP deadline until the most recent delay. LMTVC was informed on September 2, 2020 that the transmitter building fabrication and installation will be delayed (see attached letter). The local municipal codes department is requiring changes to the prefabricated building before it can be approved to be installed on site. The building fabricator is doing the best they can to make up the time, which is

¹ See Letter from Barbara A. Kreisman, Chief, Video Division, Media Bureau to Local Media TV Chicago, LLC (April 8, 2020).

² *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).

³ 47 C.F.R. § 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 ¶ 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."

⁶ Construction Permit File No. 0000104087.

difficult with ongoing delays relating to COVID-19 shutdown and restrictions. However, even with the fabricator's best efforts, the work is unlikely to be done before the last week of September. Based on the work that remains to be done once the building is installed, LMTVC is unlikely to be able to complete construction by the current CP expiration date of October 13, 2020. LMTVC continues to work diligently toward completing the W40CN-D repack facility, anticipating that it will resume operations by late October.⁷

Because LMTVC's inability to complete construction of the Station's permanent facilities is due to circumstances beyond its control and the Station has ceased operating on its pre-auction channel, good cause exists to waive Section 73.3598(b) of the Rules. Accordingly, LMTVC respectfully requests that the Commission toll the CP for an additional 180 days, through and including April 11, 2021.

⁷ LMTVC is simultaneously requesting a further extension of its silent STA authority and waiver of Section 312(g) to allow it to remain silent longer than 12-months.