

## REQUEST TO EXTEND OR TOLL REPACK CONSTRUCTION PERMIT

WNYT-TV, LLC (the “Licensee”), the licensee of Full-Service Television Station WNYA, Pittsfield, Massachusetts (Facility ID No. 136751) (the “Station”), pursuant to Section 73.3598(b) of the Commission’s rules (the “Tolling Rule”), hereby requests tolling (or other extension) of its construction permit for a permanent facility on its new post-repack channel (LMS File No. 0000078439, as currently extended until December 30, 2020, through LMS File No. 0000110193) (collectively, the “Permit”), including, as necessary and pursuant to Section 1.3 of the Commission’s Rules, a waiver of the Tolling Rule’s requirements for cause. The Licensee and Station hereby request a tolling (or extension) for approximately 180 days (through June 1, 2021), due to circumstances beyond the Station’s control and because such tolling or other extension is consistent with the public interest, including the continuing of the Station’s over-the-air service to its audience as it completes its transition to a permanent facility on its post-repack channel (Channel 7).

The Tolling Rule allows the Commission to toll the expiration date of a construction permit under specific circumstances, including acts of God, delays due to administrative or judicial review, and court, environmental or zoning matters. In addition, as the Media Bureau has noted in similar contexts, a station that may not qualify for tolling under these specific criteria may yet present good cause to waive these tolling criteria when “rare and exceptional circumstances” prevented construction by the expiration date of the relevant construction permit. *See, e.g.*, Letter to Paradise (KCVU-TV) Licensee, Inc., LMS File No. 0000124987 (dated Nov. 6, 2020).

In this case, and per prior filings, the Station is transitioning from its Channel 13 pre-repack facilities to its post-repack channel, Channel 7. Assigned to the Phase 10 transition period, the Station had its current Permit’s technical parameters approved in late 2019, which, among other changes, altered its permitted transmission site. This new Permitted Site offered a number of benefits to the transition, including allowing the Station to co-locate with its linked station, WXXA-TV, Albany, New York. However, in part because the Station was not able to transition to Channel 7 until WXXA-TV had completed its (also) Phase 10 transition from Channel 7 to Channel 8, a number of equipment issues precluded the Station’s transition to Channel 7 as of the Phase 10 deadline in July 2020. Accordingly, the Station instead obtained special temporary authority (“STA”) to operate on Channel 7 from an interim facility while awaiting the equipment and related work necessary to complete construction of its Permitted post-repack facility. *See* LMS File No. 0000115992. This equipment included a channel insertion filter, as ordered by WXXA-TV, and the Station’s own new antenna, which, like the filter, was ordered from Dielectric.

Subsequent to that order, however, the Station learned that Dielectric may not be able to deliver the required antenna by December, as the Station had expected. Then, on November 19, 2020, the Station received specific notice from Dielectric and WXXA-TV that, “due to a Covid-19 outbreak,” Dielectric had to shut down all non-emergency manufacturing, and its shipment of a number of equipment orders, including the required channel filter for WXXA-TV, was going to be further delayed for multiple weeks. As of November 30, the Station has not received any update as to the timing of the delivery of the relevant equipment, and it appears certain that such

delivery will not to be completed in time to complete construction of the Permitted facility this year. Moreover, any delivery of the equipment in January (or February) seems likely to be subject to further installation delays due to winter weather.

Notwithstanding whether the current pandemic constitutes an “act of God” for purposes of Section 73.3598(b) (as it may under many force majeure contractual clauses), the projected receipt of the antenna and filter such that they cannot be installed and operational until after the Permit is to expire should constitute sufficient basis for tolling (either under the Rule or per a waiver for cause) the Permit until Spring 2021. As the Commission is aware, the Station could not complete its construction and testing on Channel 7 until its linked station moved from its prior operations on Channel 7, which occupied most of the period under the initial Permit. In addition, the Licensee and Station have been actively working to construct the Permitted facility, especially since its linked station has now completed its transition from Channel 7 to Channel 8. Among other work, the Station’s permanent transmitter for its Permitted facility is already in place and installed, and the tower site itself has been evaluated by a tower crew. However, the delay in WXXA-TV’s channel insertion filter delivery from Dielectric has in turn delayed the tower crew from completing its work on the transmission line, which was expected to have occurred in late November. That said, and assuming good weather and an available tower crew, the remaining work should not take more than a few weeks once all relevant equipment is received (though, at present, it is not clear when these deliveries will occur). In addition, until such work is complete and the Permitted facility operational, the Station intends to minimize impact on its audience by continuing to broadcast from its interim facility on Channel 7 pursuant to STA. (Contemporaneously with this filing, the Station also intends to request to extend its current STA to broadcast from these interim facilities on Channel 7 until June 1, 2021, or such other date coincident with any period resulting from this request.)

This tolling request, together with the Station’s Channel 7 STA and extension request, will not impact the repack efforts of other stations because the Station has already transitioned to its post-repack channel, albeit not yet with its Permitted facility. Furthermore, grant of this Permit tolling/extension request would be in the public interest because it would allow WNYA to continue to broadcast on its post-repack channel without disruption to the public. Based on the unusual and unexpected circumstances described herein, the Licensee and Station hereby request that the FCC extend or toll the Permit for an appropriate period sufficient for the Station to receive, install and test all ordered equipment, and to otherwise complete construction and testing of its new permanent Channel 7 facility pursuant to the Permit.