



Federal Communications Commission
Washington, D.C. 20554

January 13, 2021

Sunshine Broadcasting Company, Inc.
Randolph Weigner
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#127
Cheyenne, WY 82007
dtvty@yahoo.com
(via electronic mail)

Re: Request for Tolling Waiver
WARP-CD, Tampa-St. Petersburg, FL
Facility ID No. 55106
LMS File No. 0000130654

Dear Licensee,

On January 7, 2021, Sunshine Broadcasting Company, Inc. (SBC), the licensee of WARP-CD, Tampa-St. Petersburg, Florida (WARP-CD or Station), filed the above-referenced request, as amended, for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant SBC's request and toll the expiration date of WARP-CD's construction permit through April 12, 2021.¹

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 SBC's extended construction expiration date falls on Sunday April 11, 2021, we will extend the construction permit to the next business day, which would be Monday, April 12, 2021. *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

SBC requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through April 12, 2021. WARP-CD has been granted a construction permit extension and tolling and its construction permit was most recently extended to January 11, 2021.⁶ WARP-CD is currently silent while SBC completes construction of the Station's post-auction channel facilities.⁷

SBC states that construction of the Station's post-auction channel facilities has been delayed due to local permitting issues. SBC states that it has been working with the local County to obtain approval, however, that process was delayed due to the impact of the COVID-19 pandemic and only just recently completed. SBC states that the Station's transmitter has been installed and the Station's antenna that was damaged upon delivery has been repaired and is ready to be shipped back to the Station. SBC goes on to state that the Station's tower crew has been delayed with other installations and is not scheduled to be available until mid-January 2021. SBC expects to be able to complete construction by April 2021. Based on the foregoing, SBC requests that the Commission waive its tolling rule and toll the WARP-CD construction permit expiration date through April 12, 2021.

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 toll the expiration date of the Station's construction permit through April 12, 2021.⁸ SBC has demonstrated it has been unable to complete construction of its post-auction channel facilities due to construction delays. We also find that grant of SBC's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WARP-CD has already ceased operation on its pre-auction channel and is silent. To the extent viewers are unable to receive WARP-CD's signal while it is silent, we believe that SBC 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.

We remind SBC 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 plan that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

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).

⁶ See LMS File Nos. 0000097518 and 0000116667. WARP-CD was repacked from channel 20 to channel 22.

⁷ See LMS File No. 0000131093. By separate action, we are granting SBC's request and extending the Station's license and silent authority to April 15, 2021, pursuant to the equity and fairness provision of section 312(g) of the Communications Act of 1934, as amended. 47 U.S.C. § 312(g).

⁸ 47 CFR § 73.3598(b).

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) (*Incentive Auction R&O*), *aff'd*, *Nat'l Ass'n of Broadcasters v. FCC*, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

We further remind SBC of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.¹⁰ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, and we encourage SBC to submit eligible invoices as soon as practicable.

The above facts considered, Sunshine Broadcasting Company, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000025104) for WARP-CD, Tampa-St. Petersburg, Florida, **IS TOLLED through April 12, 2021**. Grant of this tolling waiver does not permit WARP-CD to recommence operation on its pre-auction channel. We also remind SBC that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹¹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division Media Bureau

cc (via electronic email): Kathleen Victory, Esq.

¹⁰ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

¹¹ See 47 CFR § 73.3598(b).