



Federal Communications Commission  
Washington, D.C. 20554

January 21, 2022

Sun Broadcasting, Inc.  
James Schwartzel  
2824 Palm Beach Boulevard  
Fort Myers, FL 33916  
[Jim.Schwartzel@sbroadcast.com](mailto:Jim.Schwartzel@sbroadcast.com)  
(via electronic mail)

Re: Request for Tolling Waiver  
WLZE-LD, Fort Myers, FL  
Facility ID No. 41376  
LMS File No. 0000169669

Dear Licensee,

This concerns a request for waiver of the Commission's tolling provisions and tolling of construction permit expiration date (Request), as amended, filed by Sun Broadcasting, Inc. (Sun), licensee of low power television station WLZE-LD, Fort Myers, Florida (WLZE-LD or Station). For the reasons below, we grant Sun's Request and toll the expiration date of the Station's construction permit to March 31, 2022.

*Background.* Requests for additional time to construct digital low power television facilities are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

*Request For Tolling Waiver.* As part of the Incentive Auction repacking process, WLZE-LD's channel 20 was displaced by WVEA-TV, Tampa, Florida, which was repacked to channel 20. WLZE-LD timely filed a displacement application requesting a construction permit for channel 27 and that application was granted on June 21, 2018 with an expiration date of June 21, 2021 (Displacement CP).<sup>4</sup>

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<sup>1</sup> See 47 CFR § 73.3598(b).

<sup>2</sup> *Id.*

<sup>3</sup> 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) (*Streamlining MO&O*) (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 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).

<sup>4</sup> See LMS File No. 0000051993 as modified by LMS File No. 0000145044.

Sun was previously granted a tolling waiver and the expiration date of the Displacement CP was tolled to December 20, 2021.<sup>5</sup>

Since the grant of its tolling waiver in May 2021, Sun states that it has diligently pursued completion of the Station's displacement facilities. The facilities are to be located on the tower of Fort Myers Broadcasting Company (FMBC)'s WINK-TV, Fort Myers, Florida, a full power station that was repacked as a result of the Commission's Incentive Auction and repacking process. WLZE-LD states that construction of the WINK-TV tower was delayed by tower design problems requiring additional local land use approvals as well as FCC environmental review. Sun reports that all local and FCC approvals were obtained and that, in January 2022, construction of the WINK-TV tower reached its maximum height. Sun states that it is now actively working to install its equipment on the new tower so that it may begin operating with its displacement facilities. Meanwhile, WLZE-LD is continuing to operate on its displacement channel from a temporary site under an engineering STA extension.<sup>6</sup> Based on the foregoing, Sun requests that the Commission waive its tolling rule and toll the Displacement CP to March 31, 2022.

*Discussion.* Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of Displacement CP to March 31, 2022.<sup>7</sup> Sun has demonstrated it has been diligently making progress towards completion of its displacement facility, but was unable to complete construction due to construction delays outside of its control including delays in its tower owner obtaining local land use approvals. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's Displacement CP.

We remind Sun that, pursuant to the Reimbursement Expansion Act, the Station is eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs reasonably incurred as a result of the reorganization of broadcast television spectrum.<sup>8</sup> Please note, however, that additional expenses incurred, such as those resulting from changes in a Station's plans to construct its displacement facilities that are unrelated to the displacement, may not be eligible for reimbursement from the Fund.

We further remind Sun that the deadline for submitting final expense documentation for reimbursement for eligible Stations is September 5, 2022.<sup>9</sup> Thus, we strongly encourage the Sun to diligently pursue completion of the current deadlines to improve the likelihood that there will be sufficient

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<sup>5</sup> See LMS File No. 0000144499.

<sup>6</sup> See LMS File No. 0000133330.

<sup>7</sup> 47 CFR § 73.3598(b).

<sup>8</sup> See *Consolidated Appropriations Act, 2018*, Pub. L. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). See also 47 CFR § 73.3701 (Reimbursement Under the Reimbursement Expansion Act); *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 34 FCC Rcd 1690 (2019); and *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 7855 (2018).

<sup>9</sup> See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (IATF/MB 2020) (setting three filing deadlines for the submission of all outstanding repack invoices, notably: 1) October 8, 2021 for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period; 2) March 22, 2022 for entities assigned completion dates in the second half of the transition period; and 3) September 5, 2022 for all other participants in the reimbursement program).

funds available to reimburse the Station for its legitimate expenses, and we encourage Sun to submit eligible invoices as soon as practicable.

The above facts considered, Sun Broadcasting, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 00000145044) for WLZE-LD, Fort Myers, Florida, **IS TOLLED through March 31, 2022**. To the extent the Station seeks additional tolling, such a request must include a detailed plan for completing construction and a showing demonstrating that completion of the Station's permanent post-auction facility was prevented for either an eligible tolling reason or rare and extraordinary circumstances outside of Sun's control.<sup>10</sup> We will look unfavorably upon any future request that does not include such information.

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic mail): Joseph A. Belisle, III, Esq.

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<sup>10</sup> *See id.* A station may also seek a waiver of the tolling rule to receive additional time to construct in the case where "rare or exceptional circumstances" prevent construction. *See Streamlining MO&O*, 14 FCC Rcd at 17536, para.42.