

Gray Television Licensee, LLC (“Gray”), licensee of full power television station WHSV-TV and permittee of digital replacement translator station WHSV-TV, Broadway, VA (FID 4688) (the “Station”), requests a waiver of the Commission’s tolling rules, to allow for a further extension of the Station’s digital replacement translator construction permit (File No. 71679) (the “CP”) or tolling of the CP to account for the displacement of the Station by WVPT and delays in obtaining zoning and quiet zone approval.

On August 31, 2018, Gray submitted an application for a digital replacement translator at Great North Mountain (the “Great North Mountain DRT”) to provide service to Broadway, which lost over-the-air service due to the necessary relocation of WHSV-TV. File No. 54797. On April 16, 2019, Gray filed an application to modify Great North Mountain DRT to specify an alternate directional antenna and associated pattern, which the FCC granted. However, on June 15, 2021, the Commission issued a Notice of Proposed Rulemaking to substitute WVPT-TV’s channel 15 for channel 11 at Staunton, Virginia.¹ The FCC subsequently adopted the proposed reallocation, which became effective on September 19, 2022.² As a result, the CP has been displaced.

In anticipation of the reallocation of WVPT-TV, Gray submitted an application in December 2021 to modify the Station to operate on Channel 25. File No. 0000177269. That application was only recently granted. Meanwhile, Gray obtained a building permit from Shenandoah County on August 11, 2022 and is working to complete construction. Site clearing began yesterday, which is a prerequisite for setting the rebar and electrical, pouring concrete for the tower base, generator pad, and building, staking the tower, installing the antenna and microwave dishes, building generator and electrical service, installing the transmitter and microwave radios, testing, and proofing. Gray expects to complete construction by early- to mid-December barring any significant weather-related delays.

The FCC’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.³ 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.⁴

Here, a waiver of tolling is appropriate because the primary delay in completing construction of the Channel 25 facility was due both to the need to change channels and the ongoing review by the NRAO and Shenandoah County. Due to circumstances outside Gray’s control, it took longer than expected to

¹ See *Amendment of Section 73.622(i), Post-Transition Table of DTV Allotments, Television Broadcast Stations (Staunton, Virginia)*, Notice of Proposed Rulemaking, MB Dkt. No. 21-248, RM-11910, DA-21-694 (MB Jun. 15, 2021).

² *Television Broadcasting Services Staunton, Virginia*, Final Rule, 87 FR 57148 (Sept. 19, 2022).

³ 47 C.F.R. § 73.3598(b).

⁴ 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”).

obtain the special use permit, but that process has been completed. Now, all that remains is to construct the facility as approved.

A waiver of the tolling standard is appropriate because the combination of the extensive local and federal permitting and coordination requirements for this site and the WVPT-TV reallocation created “rare and exceptional circumstances” beyond Gray’s control that prevented construction. Gray had identified channel 15 as an available channel to serve Broadway, but the WVPT-TV reallocation is mutually exclusive with the CP. Accordingly, Gray had to identify another available channel, which it is now working to construct.

A waiver of tolling under these circumstances is consistent with the Commission’s approach to other construction related delays as part of the post-Incentive Auction transition. 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.”⁵ In justifying the provision of a one-time, 180-day extension, the FCC explained that “[g]iven the variety of challenges that stations may face in connection with the post-auction transition, stations that are able to demonstrate that they have experienced uncontrollable and unexpected delays in construction should be allowed a single extension of up to six months before being subject to our stricter tolling provisions.”⁶ Although the Commission was specifically addressing full power and Class A stations, here the Great North Mountain DRT is being displaced by a full power station that still has not completed its post-auction transition.

For the reasons stated above, the Commission should waive the tolling standard and provide Gray with additional time to complete construction of the Great North Mountain DRT. Although Gray anticipates completing construction by early- to mid-December, to avoid the need for additional tolling, Gray proposes that the FCC extend the CP through January 17, 2023.

⁵ *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).

⁶ *Incentive Auction Order* ¶ 583.



Tue 8/2/2022 4:09 PM

Lemuel Hancock <LHancock@shenandoahcountyva.us>
RE: Great North Mountain WHSV tower permit

To: Scott Kessler; Jason Smith

Cc: Tyler Hinkle; Summer Andes; Emily Carroll; Tim Ferguson



New-Commercial-Additions-Packet.pdf
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Scott,

Please see the permit application for the commercial structure. Generally, we need to review/approve the structure through a building permit, so all the engineering drawings for the structure will be reviewed and approved. On page 5 you will see the building permit application, please fill this out, you will need building permit, electrical, and zoning. You would not be able to apply for this permit until the SUP was approved. This can now be processed, but you will need to submit this and the fee for it. Please do this ASAP with (to-scale) drawings. And we will process as quickly as we can.

Thank you,
Lemuel