



Federal Communications Commission
Washington, D.C. 20554

May 24, 2019

CNZ Communications SE, LLC
15200 Sunset Blvd
Suite 202
Pacific Palisades, CA90272

Re: Request for Tolling Waiver
WLGA, Opelika, AL
Facility ID No. 11113
LMS File No. 0000072815

Dear Licensee,

On May 16, 2019, CNZ Communications SE, LLC (CNZ), the licensee of WLGA, Opelika, Alabama (WLGA or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant CNZ's request and toll the expiration date of WGLA's construction permit through November 25, 2019.

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.¹ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.² 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.³ 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.⁴

CNZ argues that tolling is appropriate because its inability to complete construction of both transmission sites for its post-auction channel facilities are due to "rare and exceptional circumstances"

¹ See 47 CFR § 73.3700(b)(5).

² See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

³ *Id.*

⁴ 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 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).

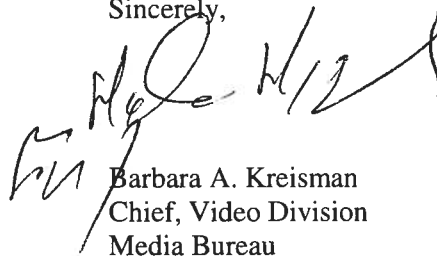
beyond its control. CNZ requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities for 180 days. CNZ states that, as authorized by the Commission, it will install a Distributed Transmission System (DTS) network, which includes a new transmitter to replicate its pre-auction service in the northeastern sector of its service area, to recoup service to population that would otherwise have been lost as a result of the repack..⁵ WLGA has already ceased operation on its pre-auction channel and is operating from its post-auction channel from its DTS site #1.⁶ CNZ represents that it has undertaken extensive efforts to refine the engineering for the DTS to ensure its pre-auction coverage is replicated, as well as select and order the equipment for its DTS facilities. Unfortunately, CNZ states that it has been unable to complete construction of DTS site #2 due to delays related to identifying a suitable location for that site and tower lease negotiations. CNZ argues that it diligently worked to meet its construction permit deadline.

Discussion. Upon review of the facts and circumstances presented, we find that rare and exceptional circumstances exist to waive Section 73.3598(b) of the Rules and to toll the expiration date of the Station's construction permit 180 days to November 25, 2019. Specifically, unusual construction delays caused by the Station's need to alter its post-auction facility and construct a DTS facility have contributed to the Station not being able to complete construction by its construction permit deadline. We also find that grant of CNZ's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WLGA has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Station's construction permit.

We remind CNZ 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." 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.

The above facts considered, CNZ Communications SE, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit for WLGA, Opelika, Alabama **IS TOLLED to November 25, 2019**. Grant of this tolling waiver does not permit WLGA to recommence operation on its pre-auction channel. We also remind CNZ that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁷

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Kathleen A. Kirby, Esq.

⁵ See LMS file No. 0000030376.

⁶ See LMS File Nos. 0000063640 and 0000072814.

⁷ See 47 § CFR 73.3598(b).