



Federal Communications Commission
Washington, D.C. 20554

March 9, 2020

Anderson (WFBC-TV) Licensee, Inc.
WTAT Licensee, LLC
Lisa Asher
2000 West 41st Street
Baltimore, MD 21211

Re: Requests for Tolling Waiver
WMYA-TV, Anderson, SC
WTAT-TV, Charleston, SC
Facility ID Nos. 416 and 56548
LMS File Nos. 0000106643 and
0000107035

Dear Licensees,

On February 25, 2020 and March 3, 2020, Anderson (WFBC-TV) Licensee, Inc., licensee of Station WMYA-TV, Anderson, South Carolina (WMYA); and WTAT Licensee, LLC, licensee of Station WTAT-TV, Charleston, South Carolina (WTAT) (collectively Cunningham and Stations) filed the above-referenced requests for waiver of the Commission's tolling provisions and tolling of the Stations' construction permit expiration dates. For the reasons below, we grant Cunningham's requests and toll the expiration date of the Stations' construction permit through September 9, 2020.

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

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.*

construction permit expiration date.⁴

Cunningham requests waivers of the tolling rule and tolling of the Stations' construction permits for their post-incentive auction channel facilities through September 9, 2020. The Stations are currently operating on their post-auction channels with temporary facilities.⁵ The Stations were each granted construction permit extensions and their permits currently expire March 9, 2020.⁶ Cunningham states that the Stations have made significant progress in constructing their post-auction channel facilities. WMYA has installed its permanent antenna and transmission line. However, due to the unavailability of transmitter crews, WMYA will not complete construction by the phase 8 completion date. Cunningham reports that WTAT has installed its transmitter and antenna installation, however, its transmission line has not been installed due to weather delays. Therefore, Cunningham seeks waivers of the tolling rules and tolling of the Stations' construction permit deadlines to September 9, 2020.

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 Stations' construction permits to September 9, 2020. We find that Cunningham was unable to complete construction of its post-auction channel facilities due to limited resources and weather delays. We also find that grant of Cunningham's waivers and tolling requests is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Stations have already ceased operation on their pre-auction channels and initiated temporary operations on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate using interim facilities, we believe that Cunningham has every incentive to ensure viewers are fully informed about the Stations' transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Stations' construction permits.

We remind Cunningham 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."⁷ Additional expenses incurred, such as expenses resulting from changes in a Stations' transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

The above facts considered, Anderson (WFBC-TV) Licensee, Inc. and WTAT Licensee, LLC's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000034497 and 0000084829) for WMYA-TV, Anderson, South Carolina and WTAT-TV, Charleston, South Carolina **ARE TOLLED to September 9, 2020**. Grant of these tolling waivers

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).

⁵ See LMS File Nos. 0000080615 and 00000106765. WMYA-TV was repacked from channel 14 to channel 35; and WTAT from channel 24 to 17.

⁶ See LMS File Nos. 0000080560 and 0000080561.

⁷ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

does not permit the Stations to recommence operation on their pre-auction channels. We also remind Cunningham that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,

A handwritten signature in black ink, appearing to read 'B. A. Kreisman', with a long horizontal flourish extending to the right.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Scott R. Flick, Esq.

⁸ See 47 § CFR 73.3598(b).