



Federal Communications Commission
Washington, D.C. 20554

March 9, 2020

University of North Carolina
PO Box 14900
Research Triangle Park, NC 27709

Re: Requests for Tolling Waiver
WUNC-TV, Chapel Hill, NC
WUNE-TV, Linville, NC
WUNG-TV, Concord, NC
WUNJ-TV, Wilmington, NC
WUNK-TV, Greenville, NC
WUNL-TV, Winston-Salem, NC
WUNP-TV, Roanoke Rapids, NC
WUNU, Lumberton, NC
Facility ID Nos. 69080, 69332, 69360,
69149, 69397, 69416, 69114 and
69124
LMS File Nos. 0000107041-
0000107048

Dear Licensees,

On March 3, 2020, University of North Carolina (UNC), the licensee of Stations WUNC-TV, Chapel Hill (WUNC); WUNJ-TV, Wilmington; WUNL-TV, Winston-Salem; WUNK-TV, Greenville; WUNP-TV, Roanoke Rapids; WUNU, Lumberton; WUNE-TV, Linville; and WUNG-TV, Concord; all North Carolina (collectively 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 UNC's requests and toll the expiration date of the Stations' construction permits.

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

UNC requests waivers of the tolling rule and tolling of the Stations' construction permits for their post-incentive auction channel facilities. 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 4, 2020.⁶ UNC states that the principal factors affecting its ability to complete its post-auction channel facilities is a combination of the state-imposed requirements governing procurement and the need to continue serve as much of each Stations' viewing audience as possible while replacing the Stations' equipment. In addition, because all of these stations are relying on the same tower crews, the work must be coordinated. These factors affect all the UNC reconstruction projects, UNC requests that the stations be given additional time, WUNP and WUNU until July 7, 2020 and WUNJ and WUNK until August 31, 2020, to complete construction. In addition, UNC cites specific reasons related to specific stations as noted below and request different deadlines for those station's CP extensions.

For WUNC, UNC states that recently discovered that it would not be able to complete the installation of the station's antenna using a helicopter and it has had to change plans to use a gin pole instead. Given the uncertainty surrounding this project and when it can be completed, UNC requests an additional 180 days to August 31, 2020 to complete construction.

For WUNL, UNC maintains that it continuing to consider whether the antenna installation will be accomplished by a helicopter lift or a crane. UNC requests additional time to July 7, 2020 to make this determination and complete installation of the antenna.

For WUNE and WUNG, site coordination and staging issues for the helicopter that will install the stations' antennas, made it impossible to meet the March 4th deadline. UNC requests an additional 60 days for the stations to complete construction to May 4, 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. We find that Sinclair was unable to complete construction of its post-auction channel facilities due to a variety of construction delays outside of its control. We also find that grant of UNC'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

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. 0000081297, 0000081298, 0000081300, 0000081301, 0000106121, 0000081302, 0000081303 and 0000098031. WUNC was repacked from channel 25 to 20; WUNE from channel 17 to 36; WUNG from channel 44 to 21; WUNJ from channel 29 to 21; WUNK from channel 23 to 25; WUNL from channel 32 to 33; WUNM from channel 19 to 28; WUNP from channel 36 to 27; and WUNU from channel 31 to 30. We note that WUNC operates on channel 20 on a shared basis with WLXI, Greensboro, North Carolina and WRAY-TV, Wake Forest, North Carolina.

⁶ See LMS File Nos. 0000074591, 0000074594, 0000074596, 0000074595, 0000074598, 0000074599, 0000074592 and 0000074593.

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 UNC 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 UNC 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, University of North Carolina's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000034414, 0000034440, 0000034415, 0000034442, 0000025767, 0000034443, 0000034416 and 0000034418) for WUNE, Linville, North Carolina; and WUNG, Concord, North Carolina **ARE TOLLED to May 4, 2020**; for WUNL, Winston-Salem, North Carolina; WUNP, Roanoke Rapids, North Carolina; and WUNU, Lumberton, North Carolina **ARE TOLLED to July 7, 2020**; and for WUNC, Chapel Hill, North Carolina; WUNJ, Wilmington, North Carolina; and WUNK, Greenville, North Carolina **ARE TOLLED to August 31, 2020**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind UNC that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,



Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Stephen Hartzell, Esq.

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.").

⁸ *See* 47 § CFR 73.3598(b).