

REQUEST FOR FURTHER WAIVER OF TOLLING OF CONSTRUCTION PERMIT

Entravision Holdings, LLC (“Entravision”), the licensee of Station WUTF-TV, Worcester, Massachusetts (Facility ID No. 30577 (“the Station” or “WUTF”), hereby respectfully requests a further extension of time, in the form of another tolling waiver, in which to complete construction of the post-auction channel facilities for WUTF. Entravision requests that its construction permit for the Station be extended to an expected completion date of August 7, 2020.

Entravision had fully expected to meet the initial Phase 4 completion date of August 2, 2019 for the Station. The Station is one of a number of users of a multi-user tower in Needham Heights, Massachusetts, which is owned by American Tower Corporation (“ATC”). In addition to its ownership of the Needham Heights tower, ATC is undertaking the construction of the modifications to the tower that will accommodate the post-repack facilities of the Boston area television stations operating from that tower.

In LMS No. 0000079850, Entravision requested an extension of its construction permit as a result of the problems that ATC was having with its contractors handling the work on the Needham Heights tower. In her letter, dated September 10, 2019, the Chief of the Video Division granted Entravision a 180-day extension of its construction permit, which expired on January 29, 2020.

Entravision had been hopeful that ATC could complete its work within the extended 180-day period. However, ATC throughout the construction process has reported to its broadcast Station tenants a series of weather, contractor, and other delays that have hindered the timely completion of the work. Likewise, the COVID-19 pandemic has caused problems for all parties, though construction work has continued.

In that the post-transition work was not completed until the six-month extension had been exhausted, Entravision requested, in LMS No. 0000099597, a further extension of the construction permit, in the form of a tolling waiver, pursuant to Sections 73.3700(b)(i) and 73.3598 of the Commission's Rules.¹ The tolling waiver and extension of construction permit was first granted on January 25, 2020 and was then extended, in LMS No. 0000113588, to July 15, 2020, and LMS No. 000011735, to August 1, 2020. *Letter to Entravision Holdings, LLC*, released May 20, 2020; *Letter to Entravision Holdings, LLC*, released July 14, 2020.

Despite an expectation that the construction work would be completed by mid-June 2020, the completion of tower construction did not occur until approximately July 1, 2020. At that time, ATC began turning over access to the tower to the individual Station tenants who would then complete the necessary work and undertake a proof of the Station's performance.² This process has recently been delayed when one of the other station users discovered problems with its antenna and ATC has been forced to bring back its antenna team in order to resolve the problem. Entravision has been advised that it can now expect the turnover to occur on August 3, 2020, though it might be delayed if there are adverse weather conditions between now and August 3, 2020.

¹ Entravision also requested a waiver of Section 73.3700(b)(iv) of the Commission's Rules in that this request is being submitted within 90 days of the termination of the extension of its construction permit. Entravision is not in charge of the construction work as it is a user of a multi-user tower and construction is being directed by ATC and not Entravision. Entravision has sought to complete the work on a timely basis but has been frustrated by the failure of the contractor unilaterally selected by ATC. Entravision requests a similar waiver in this instance.

² Entravision had previously been concerned as to Massachusetts state quarantine limitations, applicable to out-of-state engineers, that might have interfered with its ability to test and proof the new antenna. Entravision has retained the services of a qualified Massachusetts-based engineer to handle this work on a timely basis.

An extension of a post-auction construction permit, beyond six months, requires the application of the tolling provisions of Section 73.3598 of the Commission's Rules. In speaking to how the tolling provisions would operate, the Commission provided that it would consider whether "additional time to construct is required after the conclusion of the initial six-month extension period..." *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, 29 FCC Red 6806 n. 1644 (2014). Entravision submits that another tolling extension is required for WUTF and the necessary basis exists for a further waiver of the tolling requirements customarily expected of a permittee, as recognized in the prior actions taken by the Commission in granting tolling waivers.

As Entravision noted in its prior tolling waiver requests, the Needham Heights tower is the principal communications tower for Boston area television stations. There has never been any question that it would not continue as the tower of choice in the post-auction period. However, neither Entravision nor any other broadcast Station tenants of that tower has control over the tower or work being undertaken. Not only is the tower owned by a third party, but that third party is directing the work necessary for post-auction operations. Thus, Entravision is subject to the actions of ATC and the contractors ATC has chosen to do the work for it. Likewise, the work during the current tolling period has been undertaken during a time period in which the COVID-19 pandemic is affecting the nation.

In this case, arising from problems caused by construction delays and the pandemic, Entravision remains unable to operate its post-auction facilities, as authorized, until it can complete the necessary work and proof on the nearly fully completed transmission facility. Section 73.3598, the Commission's tolling provision, sets out a series of requirements in order to toll a construction permit. In the absence of facts that support Section 73.3598

tolling, a waiver of that provision is required, premised on the existence of “rare and exceptional circumstances” warranting such relief. *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*, 14 FCC Rcd 17525, 17542 (1999).

In *Public Notice*, DA 19-1246, released December 9, 2019, the Commission’s Media Bureau and Incentive Auction Task Force spoke to the status of the repack process. The parties advised (at Para. 16) that their Transition Scheduling Plan “includes flexibility to work with individual stations that face unforeseen challenges on a case-by-case basis and to adjust requirements in a manner that does negatively impact the overall schedule (footnote omitted).” Entravision submits that the situation presented herein is unforeseen, clearly not of Entravision’s choosing or desire, beyond its control, and not likely to impede the completion of the repack process or cause material harm to viewers, thereby providing the public interest basis for a further waiver of the Commission’s rules. *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972)

Considering that, despite Entravision’s diligent efforts to complete construction during the construction period and owing to factors well beyond its reasonable control, the Station is unable to meet its required and extended deadlines, Entravision submits that there exists a basis to waive, once again, the tolling provisions of Section 73.3598 and allow additional time for the completion of the necessary work while WUTF-TV operates with the interim facilities described in its STA.

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