

**Second Request for Waiver of Section § 73.3598(b) for,
and Further Extension of, WUNK-TV's Repack CP**

A. Introduction and Background

The University of North Carolina (the “licensee” or “applicant”), licensee of WUNK-TV, Greenville, North Carolina (Fac. ID No. 69149) (“WUNK-TV”), respectfully requests a further extension of time to complete construction of its full, authorized post-transition facilities, i.e., the facilities specified in WUNK-TV’s repack construction permit (“CP”) issued in LMS File No. [0000025767](#). WUNK-TV was granted an initial extension of its repack CP in LMS File No. [0000074595](#), and subsequently granted a tolling waiver in LMS File No. [0000107045](#) (“Initial Tolling Waiver”) such that the repack CP is now scheduled to expire August 31, 2020. To be clear, WUNK-TV has been operating on its post-transition channel since the Phase 5 deadline using an interim facility. See LMS File Nos. [0000081000](#) (initial post-transition interim facility STA), and+ [0000106121](#) (post-transition aux antenna license).

In addition to all of the facts and factors set forth in WUNK-TV’s Initial Tolling Waiver, which we will not reiterate here, the licensee is now facing COVID-19 circumstances that have derailed both (i) the construction plans and (ii) WUNK-TV’s prior optimism about the timing of the completion of its repack project. In short, WUNK-TV’s repack project will not be complete by August 31, 2020, and, as discussed below, the licensee can offer cautious optimism—but not certainty—for its prediction when the project will be completed.

As set forth in WUNK-TV’s second quarter 2020 Transition Plan Progress Report (filed July 7, 2020, in LMS File No. [0000117151](#)),

The most significant item remaining is the main antenna system installation.

This work includes (a) the removal of the existing main antenna (which cannot be retuned to WUNK-TV’s post-transition channel) and (b) the installation of the permanent post-transition main antenna system in the same location. This work was originally rescheduled to be completed in July 2020. As previously reported, the situation with the COVID-19 pandemic has disrupted that construction timeline.

At this time some of GTI-America’s Canadian based crews have been able to return to work in the United States. The WUNK-TV main antenna system installation has been currently rescheduled to begin in late August with a scheduled completion about 4 weeks later in late September 2020. Beyond potential construction delays that could result from the evolving COVID-19 situation, there is also the Atlantic hurricane season that could potentially have an adverse impact on the schedule as well. The WUNK-TV site is located in coastal eastern North Carolina, which is an area subject to severe flooding as a result of rainfall from tropical weather systems. As outlined in WUNK-TV’s 4th quarter 2017 transition progress report, the months of August and September are historically the most active months of hurricane season for the state of North Carolina. As of the date of this report, there have already been 4 named storms during the 2020 Atlantic Hurricane season. Completion of the

project and the antenna system installation is a top priority. At the same time UNC-TV is attempting to look prospectively at the timeline and the scope of the project and how the site's location could impact the project.

As of early July, it appears unlikely that the project will be completed by the current August 31, 2020 deadline. The COVID-19 pandemic circumstances—which have directly affected and are continuing to directly affect the final construction steps for WUNK-TV—are beyond the control of the licensee, are continuing to develop, and are unpredictable.¹

Fast-forward a month (since the filing of the WUNK-TV second quarter Transition Plan Progress Report), and there have been superseding developments. The tower crew assigned to WUNK-TV's site is not yet onsite for WUNK-TV and will not be onsite until they complete their work at another of UNC-TV's repack sites (WUNP-TV, Roanoke Rapids, NC) which itself has already been further delayed (*see* LMS File No. [0000116243](#)). The tower crew has advised that it expects to be onsite at WUNK-TV at the very end of August (i.e., on the date that the repack CP is currently scheduled to expire) and expects to complete the project around during the first week of October 2020. Of course, weather at the WUNK-TV site could become an issue as the Greenville DMA is often affected by Atlantic hurricanes that hit the North Carolina coast, and the final construction will occur during the Atlantic Hurricane Season. (The 9th named Atlantic storm in 2020 hit the North Carolina coast—and affected the Greenville area—on August 3, 2020.)² Because we now find ourselves requesting more time as a result of an unanticipated situation caused by circumstances beyond the applicant's control, we are now requesting an additional 112 days (i.e., through December 21, 2020) in order to preemptively guard against uncontrollable contingencies such as (but not limited to) delays in the arrival of the tower crew, unfavorable weather, a second wave of COVID-19, and other unforeseen circumstances.

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.³ All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of Section 73.3598(b) of the Rules.⁴ Indeed, the Media Bureau has observed that if a station's repack construction has been disrupted by circumstances other than those provided for in its tolling rules, "[s]tations may also seek a waiver of the tolling rule to

¹ WUNK-TV Second Quarter 2020 Transition Plan Progress Report, LMS File No. [0000117151](#) (filed July 7, 2020), Narrative Exhibit at p.1.

² Indeed, at least one TV station in the Greenville market was off the air for a short period of time on August 4, 2020, as a result of Hurricane/Tropical Storm Isaias. *See* <https://www.witn.com/2020/08/04/alert-technical-difficulties-cant-find-witn-stream-here/>.

³ *See* 47 C.F.R. § 73.3700(b)(5).

⁴ *See* 47 C.F.R. § 73.3700(b)(5)(i) (citing 47 C.F.R. § 73.3598(b)).

receive additional time to construct in cases where ‘rare or exceptional circumstances’ prevent construction.”⁵

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.⁶ 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.⁷

B. Waiver Standard and Public Interest Considerations

Generally, the FCC may grant a waiver for “good cause shown.”⁸ A waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.⁹ In considering a waiver, the FCC may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Such a waiver is appropriate if circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.¹¹

As demonstrated herein, good cause exists for waiver of Section 73.3598(b) in this particular

⁵ *Incentive Auction Task Force and Media Bureau Remind Repacked Stations of Certain Post-Auction Transition Requirements and Deadlines*, Public Notice, 33 FCC Rcd ¶13 n.34 (MB and IATF 2018).

⁶ *See id.* The COVID-19-related circumstances that have contributed significantly to the need for the instant application likely qualify—by themselves—as an “act of God” under the Commission’s tolling rule in any event. Nonetheless, this tolling waiver request is the appropriate posture from which to make this request for more time to construct because the applicant was previously granted a tolling waiver, which related to transition-related circumstances wholly unrelated to COVID-19.

⁷ *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” and concluding that in such “limited circumstances,” the Commission would entertain requests for waiver of its “strict tolling provisions”).

⁸ 47 C.F.R. § 1.3.

⁹ *See Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

¹¹ *See Northeast Cellular*, 897 F.2d at 1166.

circumstance. Among the reasons that support the Media Bureau taking action favorable to the applicant are as follows:

- WUNK-TV timely terminated its pre-transition channel operations and has been operating on its post-transition channel using interim facilities since the end of Phase 5, which is the phase to which the station was originally assigned.
- Because WUNK-TV's timely transition has already occurred, no interference issues would be caused by a further extension of WUNK-TV's repack CP, and a grant would not delay, alter, or affect in any way the nationwide transition of full power and Class A stations nor the offering of new 600 MHz wireless services by new 600 MHz wireless licensees.
- The vendor for the final services required for WUNK-TV's post-transition primary antenna construction became unavailable on the original schedule as a result of the global COVID-19 pandemic.
- The vendor for the final services required for WUNK-TV's post-transition primary antenna construction will be providing services to another repacked UNC-TV station prior to becoming available for the final work at WUNK-TV's site and is obligated to complete the work at the other site before moving to the WUNK-TV site.
- WUNK-TV's repack construction is essentially complete other than the final antenna system work that is now scheduled to (hopefully) be complete as soon as early October 2020, which—if it comes to fruition—will be within just a few weeks from the current CP expiration date.

C. Conclusion

In sum, grant of this Section 73.3598(b) waiver request (i) would be consistent with other actions already taken by the Media Bureau for similarly-situated repacked stations, (ii) would recognize that WUNK-TV took appropriate and timely action to ensure a timely transition by its assigned Phase 5 deadline, (iii) would demonstrate an understanding that the factors—especially the effects of the global COVID-19 pandemic—causing the further delay in completion of WUNK-TV's final post-transition facility have been beyond the licensee's control, (iv) will not undermine or delay any post-Auction transition goals, and (v) does not require waiver of any interference regulations or policies. Because WUNK-TV already successfully terminated its pre-transition channel operations in a timely fashion by the Phase 5 deadline (and successfully cut over to the interim antenna facility to effectuate the timely channel change), a further extension of WUNK-TV's repack CP for 112 days (i.e., until December 21, 2020) will not negatively affect the nationwide transition. Accordingly, grant of this request is in the public interest.

* * * * *