



Federal Communications Commission
Washington, D.C. 20554

August 14, 2020

Sanford Broadcasting Group, Inc.
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Re: Request for Tolling Waiver
WBFT-CD, Sanford, NC
Facility ID No. 64400
LMS File No. 0000116295

Dear Licensee,

On June 18, 2020, Sanford Broadcasting Group, Inc. (SBG), the licensee of Station WBFT-CD, Sanford, North Carolina (WBFT-CD or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit. For the reasons below, we grant the Station's waiver request and toll WBFT-CD's construction permit to October 15, 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 construction permit expiration date.⁴

SBG requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to October 15, 2020. WBFT-CD ceased operations on its pre-auction channel

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).

and is currently silent.⁵ WBFT-CD was previously granted a construction permit extension and subsequent tolling through June 30, 2020.⁶

SBG states the Station abruptly lost its tower lease and was forced to leave its tower site and go silent in July 2019.⁷ Since that time, SBG maintains that it has made good faith efforts to build its repack facilities. SBG states that it has located and secured an alternative tower site and it has filed a minor modification application⁸ specifying the new tower site, which was granted June 5, 2020. At the time of its filing, SBG stated that it was working to obtain the necessary local permits for the new tower, ordering equipment and arranging for installation. According to the Station's counsel, construction of the new transmitter building is ready to proceed and SBG is expecting all equipment to be delivered by the end of August. To allow time for the completion of the new facilities, SBG requests tolling to October 15, 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 Station's construction permit to October 15, 2020.⁹ SBG has demonstrated it did not complete construction of its post-auction channel facilities due to unexpected loss of its tower site and its continued search for a new site. We also find that grant of SBG's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WBFT-CD has already ceased operation on its pre-auction channel and is silent. We believe that SBG has every incentive to ensure viewers are fully informed about the Station's transition plan and plans to resume operation 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 SBG 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."¹⁰ 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.

⁵ See LMS File No. 0000116294. Concurrently with the release of this letter, we are also granting WBFT-CD's request for extension of silent authority and license pursuant to section 312(g) of the Communications Act of 1934. See 47 U.S.C. § 312(g).

⁶ See LMS File Nos. 0000078901 and 0000093555.

⁷ Section 312(g) of the Communications Act of 1934 (Act) provides that "[i]f a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license . . . for any reason to promote equity and fairness." 47 U.S.C. § 312(g). On August 14, 2020, the Video Division granted SBG's request for extension of its silent authority and extension of the Station's license to October 15, 2020. See LMS File No. 0000116294.

⁸ See LMS File No. 0000115744.

⁹ 47 CFR § 73.3598(b).

¹⁰ 47 U.S.C. § 1452(b)(4)(A)(i). See also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567, 6821, para. 622 (2014) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

We further remind SBG that the Commission has stated that the Bureau may announce a deadline for the submission of final expense documentation for reimbursement well before the statutory deadline of July 3, 2023.¹¹ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Station for its legitimate repacking expenses, and we encourage SBG to submit eligible invoices as soon as practicable.

The above facts considered, Sanford Broadcasting Group, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000115744) for WBFT-CD, Sanford, North Carolina, **IS TOLLED to October 15, 2020**. Grant of this tolling waiver does not permit WBFT-CD to recommence operation on its pre-auction channel. We also remind SBG that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹²

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Elizabeth E. Spainhour, Esq.

¹¹ See *id.* at 6567, para. 616; *LPTV, TV Translator, and FM Broadcast Station Reimbursement; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, MB Docket 18-214 and GN Docket No. 12-268, Report and Order, 34 FCC Rcd 1690, 1739, para. 105 (2019). See also *Incentive Auction Task Force and Media Bureau Report on the Status of the Post-Incentive Auction Transition and Reimbursement Program et al.*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 34 FCC Rcd 304, 312, para. 23 and n.35 (IATF/MB 2019).

¹² See 47 CFR § 73.3598(b).