



Federal Communications Commission  
Washington, D.C. 20554

November 2, 2020

New Bern (WYDO-TV) Licensee, Inc.  
Lisa Asher  
2000 West 41st Street  
Baltimore, MD 21211  
[LAsher@cunninghambroadcasting.com](mailto:LAsher@cunninghambroadcasting.com)  
(via electronic mail)

Re: Request for Tolling Waiver  
WYDO(TV), Greenville, NC  
Facility ID No. 35582  
LMS File No. 0000124568

Dear Licensee,

On October 13, 2020, New Bern (WYDO-TV) Licensee, Inc. (NBL), the licensee of Station WYDO(TV), Greenville, North Carolina (WYDO 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 NBL's waiver request and toll WYDO's construction permit through January 11, 2021.

*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.<sup>1</sup> All subsequent requests for additional time to construct are subject to the Commission's tolling provisions of section 73.3598(b) of the Rules.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

NBL requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities to January 11, 2021. WYDO is currently operating on its post-auction

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<sup>1</sup> See 47 CFR § 73.3700(b)(5).

<sup>2</sup> See 47 CFR § 73.3700(b)(5)(i) citing 47 CFR § 73.3598(b).

<sup>3</sup> *Id.*

<sup>4</sup> 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).

channel using an interim facility while it completes construction of its post-auction channel facilities.<sup>5</sup> WYDO was previously granted a construction permit extension and tolling through October 13, 2020.<sup>6</sup>

NBL states that the Station's post-auction channel transmitter has been installed, but its post-auction channel antenna has not been installed due to delays in scheduling a helicopter lift crew. NBL has decided to forego using a helicopter lift and will instead use a gin pole to install the permanent antenna. NBL reports that the tower crew is currently on site working on the installation. Therefore, in light of these circumstances, NBL requests tolling of the Station's construction permit for 90 days through January 11, 2021.

*Discussion.* Upon review of the facts and circumstances presented, we find that sufficient circumstances exist to waive the rules and toll the expiration date of the Station's construction permit through January 11, 2021.<sup>7</sup> NBL has demonstrated it did not complete construction of its post-auction channel facilities due to construction delays. We also find that grant of NBL's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WYDO has already ceased operation on its pre-auction channel and initiated temporary operations on its post-auction channel. To the extent some viewers are unable to receive WYDO's signal while it operates using its interim facility, we believe that NBL has every incentive to ensure viewers are fully informed about the Station's transition plan. Ultimately, we conclude that the public interest will be served by grant of tolling of the Station's construction permit.

We remind NBL 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."<sup>8</sup> 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.

We further remind NBL of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.<sup>9</sup> 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 NBL to submit eligible invoices as soon as practicable.

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<sup>5</sup> See LMS File No. 0000124567. WYDO was repacked from channel 47 to channel 19.

<sup>6</sup> See LMS File Nos. 0000099078 and 0000117792.

<sup>7</sup> 47 CFR § 73.3598(b).

<sup>8</sup> 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) (*Incentive Auction R&O*), aff'd, Nat'l Ass'n of Broadcasters v. FCC, 789 F.3d 165 (D.C. Cir. 2015) ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

<sup>9</sup> See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306, GN Docket No. 12-268, Public Notice, DA 20-1171, para. 10 (IATF/MB Oct. 7, 2020) (setting three filing deadlines for submission of all remaining repack invoices: for eligible entities assigned repack transition completion dates in the first half of the 39-month post-auction transition period, the deadline for submitting all remaining invoices is October 8, 2021; the deadline for entities assigned completion dates in the second half of the transition period is March 22, 2022; and the deadline for all other participants in the reimbursement program is September 5, 2022).

The above facts considered, New Bern (WYDO-TV) Licensee, Inc.'s request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000093145) for WYDO(TV), New Bern, North Carolina, **IS TOLLED to January 11, 2021**. Grant of this tolling waiver does not permit WYDO to recommence operation on its pre-auction channel. We also remind NBL that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.<sup>10</sup>

Sincerely,

/s/

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

cc (via electronic email):  
Paul Cicelski, Esq.  
Scott Flick, Esq.

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<sup>10</sup> See 47 CFR § 73.3598(b).