



Federal Communications Commission
Washington, D.C. 20554

November 12, 2020

WCTI Licensee, LLC
Harvey Arnold
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Cockeysville, MD 21030
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Re: Request for Tolling Waiver
WCTI-TV, New Bern, NC
Facility ID No. 18334
LMS File No. 0000123850

Dear Licensee,

On October 2, 2020, WCTI Licensee, LLC (Sinclair), the licensee of WCTI-TV, New Bern, North Carolina (WCTI or Station), filed the above-referenced request for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant Sinclair's request and toll the expiration date of WCTI's construction permit through November 30, 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

Sinclair requests reinstatement of its construction permit, waiver of the tolling rule, and tolling of its construction permit for its post-incentive auction channel facilities to November 30, 2020. WCTI was

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).

granted an extension of its construction permit to October 1, 2020.⁵ WCTI is currently operating on its post-auction channel with temporary facilities.⁶

Sinclair states that, due to tower crew and weather delays, WCTI was not able to fully complete construction of its post-auction channel facilities permanent post-repack facilities by its October 1, 2020 deadline. However, Sinclair states that WCTI has made significant progress in constructing its post-auction channel facilities. Sinclair states that the tower modifications have been completed, the tower crew is currently on-site and the antenna replacement is expected to be completed soon. Barring unforeseen delays, Sinclair predicts that it will be able to complete the project in November 2020. Accordingly, Sinclair seeks a waiver of the tolling rules and tolling of its construction permit deadline to November 30, 2020.

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 to November 30, 2020.⁷ Sinclair has demonstrated it did not complete construction of its post-auction channel facilities due to construction and weather delays. We also find that grant of Sinclair's tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WCTI 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 WCTI's signal while it operates using its interim facility, we believe that Sinclair 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 Sinclair 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."⁸ 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 Sinclair of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.⁹ Thus, we strongly encourage the Station to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds

⁵ LMS File No. 0000116538.

⁶ See LMS File No. 0000124047. WCTI was repacked from channel 12 to channel 10.

⁷ 47 CFR § 73.3598(b).

⁸ 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.").

⁹ 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).

available to reimburse the Station for its legitimate repacking expenses, and we encourage Sinclair to submit eligible invoices as soon as practicable.

The above facts considered, WCTI Licensee, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000106300) for WCTI-TV, New Bern, North Carolina, **IS TOLLED to November 30, 2020**. Grant of this tolling waiver does not permit WCTI to recommence operation on its pre-auction channel. We also remind Sinclair that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division
Media Bureau

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

¹⁰ See 47 § CFR 73.3598(b).