



Federal Communications Commission
Washington, D.C. 20554

December 17, 2020

WNYT-TV, LLC
Stephen P. Baboulis
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Albany, NY 12204
sbaboulis@wnyt.com
(via electronic mail)

Re: Request for Tolling Waiver
WNYA(TV), Pittsfield, MA
Facility ID No. 86534
LMS File No. 0000129321

Dear Licensee,

On December 3, 2020, WNYT-TV, LLC (WL), the licensee of WNYA(TV), Pittsfield, Massachusetts (WNYA or Station), filed the above-referenced request, as amended, for waiver of the Commission's tolling provisions and tolling of the Station's construction permit expiration date. For the reasons below, we grant WL's request and toll the expiration date of WNYA's construction permit 180 days through June 28, 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.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

WL requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through June 28, 2021. WNYA has been granted a construction permit

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).

extension and its construction permit was extended to December 30, 2020.⁵ WNYA is currently operating on its post-auction channel with temporary facilities.⁶

WL states that it cannot complete construction and begin operating the Station's permanent post-auction channel facilities until a co-located station, WXXA-TV, Albany, New York, installs an "insertion filter" and the Station receives its own new antenna. WL states that delivery of both of these pieces of equipment has been delayed due to COVID-19 pandemic related shutdowns.⁷ WL does not expect that the equipment will be delivered by the Station's current construction permit expiration date. Based on the foregoing, WL requests that the Commission waive its tolling rule and toll the WNYA construction permit expiration date an additional 180 days to June 28, 2021.

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 through June 28, 2021.⁸ WL has demonstrated it has been unable to complete construction of its post-auction channel facilities due to equipment delivery delays. We also find that grant of WL's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WNYA has already ceased operation on its pre-auction channel and is operating from an interim facility on its post-auction channel. To the extent some viewers are unable to receive WNYA's signal while it operates using its interim facility, we believe that WL 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 waiver and tolling of the Station's construction permit.

We remind WL 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."⁹ 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 WL of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.¹⁰ Thus, we strongly encourage the Station to diligently

⁵ LMS File No. 0000110193. WNYA was repacked from channel 13 to channel 7.

⁶ See LMS File No. 0000129322.

⁷ The World Health Organization has classified COVID-19 as a pandemic and the President declared it a national emergency.

⁸ 47 CFR § 73.3598(b).

⁹ 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.").

¹⁰ See *Invoice Filing Deadlines for TV Broadcaster Relocation Fund*, MB Docket No. 16-306 and GN Docket No. 12-268, Public Notice, 35 FCC Rcd 11273, 11277, paras. 10-11 (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).

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 WL to submit eligible invoices as soon as practicable.

The above facts considered, WNYT-TV, LLC's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000078439) for WNYA(TV), Pittsfield, Massachusetts, **IS TOLLED through June 28, 2021**. Grant of this tolling waiver does not permit WNYA to recommence operation on its pre-auction channel. We also remind WL that any subsequent requests for tolling of its construction permit deadline will be subject to the Commission's tolling provisions.¹¹

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division Media Bureau

cc (via electronic mail): Bill LeBeau, Esq.
Attorney of Record

¹¹ See 47 CFR § 73.3598(b).