



Federal Communications Commission
Washington, D.C. 20554

December 22, 2020

University of North Carolina
P.O. Box 14900
Research Triangle Park, NC 27709
fcc_notice@unctv.org
(via electronic mail)

Re: Request for Tolling Waiver
WUND-TV, Edenton, NC
Facility ID No. 69292
LMS File No. 0000129793

Dear Licensee,

On December 16, 2020, University of North Carolina (UNC), the licensee of WUND-TV, Edenton, North Carolina (WUND 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 UNC's request and toll the expiration date of WUND's construction permit 120 days through May 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.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

UNC requests waiver of the tolling rule and tolling of its construction permit for its post-incentive auction channel facilities through May 11, 2021. WUND 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 tolling and its construction permit was most recently extended to January 11, 2021.⁵ WUND is currently operating on its post-auction channel with an auxiliary facility.⁶

UNC states that significant progress has been made on the construction of the Station's post-auction channel facilities. However, UNC states that in late November 2020, when system testing began on the Station's newly-installed main antenna system it failed to meet performance specifications. Since that time, UNC states that the manufacturer has had its RF engineers reviewing the test data to determine how to most effectively correct the problem. UNC states that it is continuing to work towards finding a solution. Based on the foregoing, UNC requests that the Commission waive its tolling rule and toll the WUND construction permit expiration date an additional 120 days to May 11, 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 May 11, 2021.⁷ UNC has demonstrated it has been unable to complete construction of its post-auction channel facilities due to performance issues with the Station's permanent post auction antenna. We also find that grant of UNC's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. WUND has already ceased operation on its pre-auction channel and is operating from an auxiliary facility on its post-auction channel. To the extent some viewers are unable to receive WUND's signal while it operates using its auxiliary facility, we believe that UNC 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 UNC 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 UNC 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. 0000086772 and 0000116241. WUND was repacked from channel 20 to channel 29.

⁶ See LMS File No. 0000098257.

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 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).

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

The above facts considered, University of North Carolina's request for waiver of the Commission's tolling provisions **IS GRANTED**. The construction permit (LMS File No. 0000025090) for WUND-TV, Edenton, North Carolina, **IS TOLLED through May 11, 2021**. Grant of this tolling waiver does not permit WUND to recommence operation on its pre-auction channel. We also remind UNC 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 mail): Stephen Hartzell, Esq.

¹⁰ See 47 CFR § 73.3598(b).