



Federal Communications Commission
Washington, D.C. 20554

January 5, 2021

Georgia Public Telecommunications Commission
Elizabeth Moylan Laprade
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(via electronic mail)

Re: Requests for Tolling Waiver
WGTV(TV), Athens, GA
Facility ID No. 23948
LMS File No. 0000130244

WACS-TV, Dawson, GA
Facility ID No. 23930
LMS File No. 0000130245

Dear Licensee,

On December 30, 2020, Georgia Public Telecommunications Commission (GPTC), the licensee of WGTV(TV), Athens, Georgia (WGTV) and WACS-TV, Dawson, Georgia (WACS) (collectively Stations), filed the above-referenced request, as amended, for waiver of the Commission's tolling provisions and tolling of the Stations' construction permit expiration dates. For the reasons below, we grant GPTC's request and toll the expiration date of the Stations' construction permits through March 31, 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

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.*

construction permit expiration date.⁴

GPTC requests waiver of the tolling rule and tolling of the Stations' construction permits for their post-incentive auction channel facilities through March 31, 2021. The Stations have been granted a construction permit extension and their construction permits were extended to December 30, 2020.⁵ The Stations are currently operating on their post-auction channels with interim facilities.⁶

GPTC states that it has made good progress towards completion of the Stations' post-auction channel facilities and was expecting to complete construction before the Stations' current construction deadline. GPTC states that the helicopter install for WGTV was booked and the helicopter is parked at a nearby airport, awaiting delivery of the new main antenna. However, GPTC states that delivery was delayed due to COVID-19 pandemic related delays with the equipment and antenna vendor. GPTC anticipates being able to complete construction by the end of March 2021. Based on the foregoing, GPTC requests that the Commission waive its tolling rule and toll the Stations' construction permit expiration dates to March 31, 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 Stations' construction permits through March 31, 2021.⁷ GPTC has demonstrated it has been unable to complete construction of its post-auction channel facilities due to equipment delivery and construction delays. We also find that grant of GPTC's waiver and tolling request is not likely to negatively impact the overall transition schedule and will not cause interference to other stations. The Stations have already ceased operation on their pre-auction channels and are operating from interim facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations' signals while they operate using their interim facilities, we believe that GPTC has every incentive to ensure viewers are fully informed about the Stations' transition plans. Ultimately, we conclude that the public interest will be served by grant of waiver and tolling of the Stations' construction permits.

We remind GPTC that pursuant to the Spectrum Act, the Stations are 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

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).

⁵ LMS File Nos. 0000116884 and 0000116914. WGTV was repacked from channel 8 to channel 7; and WACS from channel 8 to channel 7.

⁶ See LMS File Nos. 0000130449 and 0000130450.

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.").

expenses resulting from changes in a Stations' transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

We further remind GPTC of the deadline for submitting final expense documentation for reimbursement for the Station is March 22, 2022.⁹ Thus, we strongly encourage the Stations to diligently pursue satisfaction of the current deadlines to improve the chances that there will be sufficient funds available to reimburse the Stations for their legitimate repacking expenses, and we encourage GPTC to submit eligible invoices as soon as practicable.

The above facts considered, Georgia Public Telecommunications Commission's requests for waiver of the Commission's tolling provisions **ARE GRANTED**. The construction permits (LMS File Nos. 0000034195 and 0000034746, respectively) for WGTV(TV), Athens, Georgia; and WACS-TV, Dawson, Georgia, **ARE TOLLED through March 31, 2021**. Grant of these tolling waivers does not permit the Stations to recommence operation on their pre-auction channels. We also remind GPTC that any subsequent requests for tolling of its construction permit deadlines will be subject to the Commission's tolling provisions.¹⁰

Sincerely,

/s/

Barbara A. Kreisman
Chief, Video Division Media Bureau

cc (via electronic mail): Margaret L. Miller, Esq.

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).

¹⁰ See 47 CFR § 73.3598(b).